



Catholic Church Clergy Abuse Investigation Report

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Jefferson City

Kansas City – St. Joseph

St. Louis

Springfield – Cape Girardeau

June 2019 Progress Report and Annual Report National Review Board

United States Conference of Catholic Bishops



I. Executive Summary

Introduction

Sexual Abuse of minors by members of Missouri's four Roman Catholic dioceses has been a far-reaching, long-standing scandal. No region of the State of Missouri has been spared.

For decades, faced with credible reports of abuse, the church refused to acknowledge the victims and instead focused its efforts on protecting its priests. During this time, the responsibility for evaluating and responding to reports of abuse and misconduct was controlled by a small circle of priests in diocesan leadership and the bishops.

Lay members of the church were generally not informed of reports, much less allowed a role in dealing with them. The standard response to reports of abuse by church leadership was to move an offending priest into a short-term period of treatment and then reassign him to public ministry in a new parish. Members of an offending priest's old and new parishes were not notified of the reason for a transfer in these cases. At best, victims were offered limited counseling services to help recover from the abuse.

Typically, victims of abuse were members of active, prominent families within a parish. The victims and their families were often involved in parish ministries such as altar serving or other liturgical roles. Many reports from victims

describe the high esteem in which priests and bishops were held and the honor felt by a parishioner when a member of the clergy paid attention to that member of the congregation. Interactions which might otherwise appear strange between an adult and an unrelated child, such as overnight camping trips, shopping trips, and time alone in a parish rectory were usually not questioned by victims' parents or lay parish staff. Clergy abusers often engaged in grooming techniques, which exploited the tremendous deference given to them by their parishioners. They often misused their offices and church resources to arrange trips through schools and churches, employed victims and their family members, and even identified victims through the sacrament of reconciliation.

However, since 2002, the four dioceses in Missouri have implemented a series of reforms that have improved their response to, and reporting of, abuse. This report recommends additional reforms to strengthen oversight and protect victims from future abuse.

The Investigation

The Missouri Attorney General's Office ("the AGO") has reviewed every available personnel record of every priest serving in the Archdiocese of St. Louis, the Diocese of Kansas City – St. Joseph, the Diocese of Springfield – Cape

Girardeau and the Diocese of Jefferson City dating back to 1945.¹ In all, this review involved the records of more than 2,000 priests.

Additionally, the AGO has reviewed the records of more than 300 deacons, seminarians, and religious women. In addition to reviewing diocesan records, the AGO has spoken with survivors of clergy abuse who came forward, as well as with family members who responded to the AGO's call for evidence of sexual abuse of minors. Such accounts are included in this report to the extent reporting victims so desired. In all, this report includes credible allegations of 163 instances of sexual abuse or misconduct by Catholic diocesan priests and deacons against minors. These instances are listed herein without personal identifying information of those involved. The offenses range from the violation of "boundary issues," such as priests engaging in inappropriate discussions or correspondence with children, to forcible rape as defined by Missouri statute. It is impossible to quantify the number of victims based on the information available to the AGO, but instances of priests abusing more than one victim are frequent.

While victims' organizations have undertaken laudable efforts to publicize instances of abuse, along with church-imposed and civil punishments assessed against offenders, this report provides, for the first time, a comprehensive review

¹ The Dioceses of Springfield – Cape Girardeau and Jefferson City were established in 1954, thus records for these dioceses date back to 1954.

of all Missouri diocesan clergy records undertaken by an organization outside of the church.

By the 1980s, pioneering victims who were dissatisfied with the church's response or who did not wish to engage the church in seeking compensation for their injuries turned to the court and criminal justice system for assistance. Most often, due to the nature of the abuse, the fear of punishment or humiliation, and the natural repression of traumatic memories, victims took decades to report the abuse they had endured.

Missouri Courts generally interpreted the civil and criminal statutes of limitations for abuse of children to begin to run once a victim reached the age of majority regardless of whether a case of repressed memory could be established. Accordingly, the success of victims seeking civil or criminal prosecution of their injuries has been mixed. Despite winning significant victories in litigation, the dioceses have paid tens of millions of dollars in settlements and judgments to victims.

Over the years, the Missouri General Assembly has repeatedly extended the statutes of limitations for the criminal prosecution of sex crimes. Although these reforms have allowed some criminal prosecutions to go forward and have removed almost all limitations on offenses against children occurring after 2017, many acts of abuse occurring in the 1980s and before remain time barred from prosecution.

After 2002, the church, including the Missouri dioceses, undertook substantial reforms in the form of the Charter for the Protection of Children and Young People (the “2002 Charter”). These reforms established lay-majority review boards to handle reports of abuse, required extensive training of clergy and lay persons interacting with youth throughout the church, and communicated reports of abuse to lay church membership. The accounts detailed in this report are overwhelmingly of misconduct occurring before 2002, though, given the nature of memory repression in victims, reports of abuse are frequently received decades after the abuse occurred. It should also be noted that since 2002, the church has, on occasion, failed to meet even its own internal procedures on abuse reporting and reporting to law enforcement.

The most notable example of this post-2002 failure is the criminal prosecution of Bishop Robert Finn. There, Bishop Finn failed to report possession of child pornography and other misconduct by Shawn Ratigan, a priest of the Diocese of Kansas City – St. Joseph, for five months. Finn pleaded guilty to failure to report suspected abuse in 2012, but his resignation from the office of bishop was not accepted by the Pope until 2015. The Finn case is one example of the continued resistance of church leadership to follow internal procedures on reporting suspected abusers and engage civil authorities when misconduct is discovered.

Despite some continued failures after the 2002 Charter, the church has generally taken a much more pastoral approach to engaging with victims and has, in most instances, promptly reported suspected abuse. Before and during the 1980s, the church's approach could fairly be described as at best ignoring reports of abuse or, at worst, actively suppressing reports and seeking to avoid controversy by moving offending priests to new parishes. The AGO determined that from the 1980s until 2002, reports of abuse were at least acknowledged internally. Unfortunately, however, the church's response was dominated by diocesan leadership, with the involvement of virtually no lay people. Sometimes victims were subject to cross-examination and misinformation by diocesan leadership. Since 2002, more lay people and experts have been included in the process, reports of abuse have been more actively addressed, and reporting parties are offered more therapeutic options by the dioceses.

In the course of the investigation, the AGO identified certain internal and systematic failures of the dioceses. First, there is no independent oversight of a bishop's day-to-day implementation of church protocols. Bishops report to no one below the Pope in the hierarchy of the church and, while uncoordinated and sometimes overlapping networks of associations and working groups exist throughout the states, regions and country, there is simply no single source of outside oversight over each bishop and no means by which best practices are

effectively implemented. The Bishop of Kansas City recently observed, “[w]e need new Church structures to address this problem: There is simply too much in the way of making a bishop accountable.” “Bishop James V. Johnston: ‘We have to address failure,’” The Catholic World Report, October 3, 2018.

For example, the National Review Board for the Protection of Children and Young People (the “Board”) – part of the United States Conference of Catholic Bishops – stated in its June 2019 progress report that it was “grateful for those [bishops] who worked diligently with your staff to address some of the concerns” raised. The Board went on to conclude, seventeen years after the approval of the 2002 Charter, that existing auditing procedures were not sufficiently thorough or independent. The bishops rejected many substantive recommendations for reform and strengthening of the 2002 Charter made by the Board in 2018 and called for another review in 2025. The lack of independent oversight of the bishops’ implementation of protocols, as well as the lack of independent review of allegations against bishops themselves, remain significant impediments to reform and improved protections.

Though the National Review Board has expressed an interest in addressing concerns, the Catholic Church in Missouri is ultimately under the jurisdiction of its own dioceses. Missouri is home to many priests from numerous religious orders, performing all manner of ministry under the territorial jurisdiction of the dioceses.

These priests are allowed to work with little or no diocesan supervision of their conduct. At most, diocesan leadership may expect to receive notification from a religious order that a priest, cleric, or religious woman will be located in their diocese. With respect to priests, a bishop confers faculties to perform mass and conduct other religious activities subject to the supervision of a specific religious order, which often is headquartered outside of Missouri. Our review of diocesan records has revealed that recordkeeping with respect to religious order priests varies widely among the orders and among the dioceses within Missouri. In no diocese, however, are religious order priests documented and supervised with the same intensity as diocesan priests.

The records of the dioceses contain numerous accounts of abuse by religious order priests that came to the attention of a diocese only after a report of abuse had been received and addressed by civil authorities. This division of authority may be coherent within the organization of the church but it allows a significant number of priests actively ministering in Missouri to avoid meaningful supervision by the church in Missouri with regard to allegations of abuse. Indeed, this arrangement has prevented the AGO from conducting a complete review of religious order priests working in Missouri. The AGO has had to rely on the scant diocesan records provided to it regarding these priests, along with information gathered from victims presenting evidence relating thereto. All catholic priests assigned to

work within a Missouri diocese do so under the auspices of the Bishop for that diocese, and they should all be subject to the same procedures and safeguards applicable to diocesan priests as a condition of acting as a priest in that bishop's diocese.

Even in cases in which the oversight system within a diocese identifies and validates reports of abuse, the church is hard pressed to remove an abusive priest from the clerical state without his consent. Any contested "laicization" process takes many years and is administered through the Vatican. As a result, this inquiry found numerous priests who committed acts of abuse but who were allowed to remain priests, ultimately receiving retirement, housing, and health benefits from the church. Some continue to enjoy the honorific title "Monsignor." Discussions of reform within the church should include proposals for expediting the process of laicizing priests after the completion of a diocesan review of misconduct and the establishment of a complete corroborating factual record.

Where reports of abuse resulted in the dismissal of priests, either by removal from public ministry or by complete removal from the clerical state, the AGO found little evidence of the church notifying the public of the priests' and former priests' locations, or of effective internal supervision of priests ordered to be removed from public ministry. In fact, in each diocese, the AGO discovered and documented instances of violations of priests' limitations of ministry. In every

instance, the violation was reported to the diocese by a third party rather than being discovered by the diocese through active supervision. There is evidence, however, that in recent years, some affirmative steps have been taken by the dioceses to better supervise priests whose public ministries have been restricted or who are subject to other limitations. Still, though, instances of effective supervision appear to be few and far between, and are generally lead by fellow priests rather than independent professionals.

In 2019, the Roman Catholic Church in Missouri faces a legacy of sorrow and distrust, decades in the making. Since 2002, it has taken steps towards significant reform, attempting to move away from the complete lack of accountability and concern for victims, which marked its conduct during much of the 20th century. The strengthening of independent oversight and an integrated approach to supervising all clergy working in Missouri are two important opportunities for additional reform. The additional reforms recommended herein focus on continuing to move the church away from a clergy-centered orientation and strengthening the oversight of the church hierarchy by independent lay review processes.

Conclusions and Call for Reforms

In its June 2019 annual report on the implementation of the 2002 Charter, the United States Conference of Catholic Bishops asks, “What more can be done?”

The AGO calls upon the dioceses to undertake, and then to accelerate implementation of, the following five reforms:

1. Lay Independent Review Board

Each diocese should establish and have in place an Independent Review Board (IRB) composed entirely of lay people. The IRB's determinations of credibility and appropriate sanctions will bear authoritative weight with respect to the ability of an offending priest to minister in the diocese. All meetings of the IRB should occur at offices or meeting facilities that are not owned or controlled by the diocese. Each reporting party should be offered the services and representation of a suitably informed, experienced, and independent lay victim advocate to help explain the process and collect and present evidence and information on behalf of the reporting party to the IRB and, if desired by the reporting party, to appear before the IRB in place of the reporting party. The victim advocate should have no other duties within the diocese.

2. Supervision and Vetting of Religious Orders and External Priests

Dioceses should assume greater oversight responsibility of all religious order priests, as well as of external priests visiting or relocating from other dioceses. This enhanced oversight should include applying to these priests

the exact same procedures and oversight protocols regarding youth protection and clergy abuse as apply to diocesan priests. This should include establishing agreements with every religious order operating in a Missouri diocese requiring that any report of misconduct against a religious order priest be immediately referred to the diocesan IRB, and that credibility and sanctions determinations of the IRB will be imposed upon the offending religious order priest.

This vetting process should require that, before granting faculties to a religious order priest or a priest from another diocese, the IRB should complete a meaningful and thorough review of the prospective priest's records, rather than simply accepting a simple attestation from another bishop or provincial. There are numerous religious order priests with public records of abuse with no or extremely limited diocesan files. This practice must be corrected.

3. Reconsideration of Pre-2002 Reports

With the assistance of willing victims, we strongly encourage the diocesan IRBs to review all claims of abuse and misconduct occurring prior to 2002. After the 2002 Charter, the IRB and the dioceses began applying a heightened standard of scrutiny to claims of abuse. Some actions taken

against priests in 2002 and 2003, based upon the application of this new standard, are discussed below in the body of the report. However, in the course of implementing the new standard, the dioceses merely invited victims who had dealt with the dioceses in the past to reiterate their claims if the victims wanted them evaluated under the new standard. The dioceses' duty to review pre-2002 reports of abuse should not be shifted to the victims. Thus, the IRB should review all past claims and subject them to the heightened 2002 Charter standards, inviting the assistance of victims.

4. Notice of Discipline and Changes in Status

In cases of offending priests who have had reports of abuse deemed credible by the IRB, the decision of the IRB and the decision of the diocese to seek laicization of the offending priest should be publicly disclosed without delay. The dioceses should make clear that the age and health of an offending priest should not be considered as a reason to forego the laicization process.

The dioceses should advocate for reforms of the laicization process so that it may be completed within one year after the IRB makes its decision. For example, the church should allow for expedited laicization of priests convicted of abuse in criminal cases. The AGO has reviewed cases in which

convicted abusers were not laicized for years after their criminal conviction – another practice requiring correction.

5. Supervision of Offenders

A robust and independent program of supervision of priests removed from public ministry or from the clerical state should be undertaken.

Independent, regular lay supervision of priests who are subject to protection plans and ministry restrictions should be undertaken. Also, Catholic facilities for priests in recovery should be supervised by the church just as if they were diocesan agencies. Dioceses should work with these facilities to ensure a priest or former priest's therapy is consistent with his ministry, while also ensuring the safety of the lay church membership and the community in general. In instances of priests "absent without leave" from ministry, notification of the lay church membership, the community, and law enforcement should be made and affirmative steps to locate such priests and return them to their respective diocese for discipline should be undertaken.

Criminal Referrals and Victim Assistance

As for the historical reports of abuse, the AGO has identified twelve cases in which there may be a reasonable likelihood for a jury to find beyond a reasonable doubt that criminal conduct occurred and where the statute of limitations would not

bar prosecution. These potential criminal cases arose in all four dioceses of Missouri. The AGO intends to complete formal referrals and transmit the same to the appropriate elected prosecuting attorneys for their review. While the AGO does not possess independent authority to bring these criminal cases without a request for assistance, each referral will be accompanied by an offer from the AGO to assist in the further investigation and prosecution of each offense. Any accepted offer will receive the full partnership and devoted resources of the Missouri Attorney General's Office. A decision to make a criminal referral is not necessarily a determination that sufficient proof currently exists to convict a priest of a crime. It is, however, a professional determination by the AGO that further development of the evidence examined could lead to such proof and that the offense, based on the age of the victim, the time the abuse is alleged to have occurred, the nature of the conduct, and sometimes other factors, such as the absence of the priest from the State of Missouri, could allow such a case to be made within the applicable statute of limitations.

In addition to providing information and context to this report, numerous victims have requested assistance from the AGO in presenting their reports to the dioceses. Therefore, the AGO is committed to working with these victims and connecting them with the appropriate review boards.

The AGO's website and hotline for victims has been an important and productive source of valuable information and insight during the preparation of this report. The AGO anticipates that the publication of this report will lead additional victims to come forward and that those victims will face the same uncertainties as others who have come before them. Therefore, the AGO will maintain its website and hotline for victims and will address any inquiries or requests for assistance it receives after the publication of this report.



II. Scope and Method of Investigation

The Office of Attorney General

The Attorney General of Missouri has broad statutory and common-law powers to conduct investigations, direct litigation, and enforce the laws of the State of Missouri. *See, e.g.*, § 27.060, RSMo; *State ex rel. Nixon v. American Tobacco, Inc.*, 34 S.W.3d 122, 136 (Mo. banc 2000); *State ex rel. McKittrick v. Missouri Pub. Serv. Comm’n*, 175 S.W.2d 857, 861 (1943); *State ex rel. Igoe v. Bradford*, 611 S.W.2d 343, 347 (Mo. App. W.D. 1980). These powers are not unlimited, however. Under Missouri law, the authority to convene a grand jury and conduct criminal investigations of crimes, such as sexual abuse of minors by clergy, and the original jurisdiction to prosecute such crimes, rests principally with elected county prosecutors and circuit attorneys.

Under Missouri law, the prosecuting or circuit attorney within a given jurisdiction is principally responsible for commencing criminal actions (§§ 56.060, 56.070, RSMo) and conducting criminal investigations (§ 56.085, RSMo), subject to certain statutory exceptions where the Attorney General is granted exclusive or concurrent jurisdiction. Prosecuting or circuit attorneys also handle grand jury proceedings. *See* § 540.140, RSMo (prosecuting or circuit attorney to appear before grand jury); Mo. Const. Art. I, § 16 (“[N]o grand jury shall be convened except upon an order of a judge of a court having the power to try and determine felonies.”). The elected prosecutor’s responsibility includes the authority to employ the grand jury

to investigate crimes involving the sexual abuse of minors, such as those found in Chapters 565, 566, and 573 of the Missouri Revised Statutes. Thus, under Missouri law, the elected county prosecutor or circuit attorney is principally responsible for investigating felonies, conducting grand-jury investigations, and commencing prosecutions of individual sex crimes against minors

Grand Jury Secrecy

In addition, Missouri’s longstanding doctrine of grand-jury secrecy would impede the publication of any report regarding evidence obtained in a grand-jury investigation. “In Missouri, grand juries are authorized by the Constitution and implemented by statute.” *State ex rel. Rogers v. Cohen*, 262 S.W.3d 648, 651 (Mo. banc 2008). Under “long-established policy,” grand jury proceedings are kept confidential and secret. *Doe v. Bell*, 367 F. Supp. 3d 966, 976 (Mo. App. E.D. 2019) (internal citation omitted). Grand jurors swear a binding oath of secrecy. § 540.080, RSMo. Longstanding and compelling state interests undergird that oath, and the tradition of grand-jury secrecy is deeply embedded in Missouri’s law and history. *Doe*, 367 F. Supp. 3d at 977-78 (“The revelation of witness names and the identity of the grand jury members may subject these citizens to the very dangers the tradition of secrecy is in place to prevent.”). Accordingly, it is “the rule that grand jury proceedings are to be kept secret except as statutes have specifically modified that rule.” *Doe v. McCulloch*, 542 S.W.3d 354, 362 (Mo. App. E.D. 2017) (quoting *State*

v. Greer, 605 S.W.2d 93, 96 (Mo. banc 1980)). Statutory exceptions to grand-jury secrecy in Missouri are severely and explicitly limited. *See* § 540.320, RSMo (requiring secrecy from grand jurors); §§ 540.300 & .310, RSMo (setting forth a limited exception for later impeachment testimony); § 540.330, RSMo (requiring the Court to instruct the grand juror of the limited disclosure permitted by §§ 540.300-540.320, RSMo). Thus, the only information typically released from a grand jury investigation is an indictment, if one is returned. § 540.270, RSMo.

For similar reasons, Missouri law generally does not authorize grand juries to release public reports or summaries of their investigations, other than their indictment(s), if any. The Missouri Supreme Court has held that “[t]here is simply no basis in the statute for assuming that the legislature intended to empower a grand jury to report the result of its investigation where that result disclosed that there were not sufficient grounds for indictment.” *Matter of Interim Report of Grand Jury for Mar. Term of Seventh Judicial Circuit of Missouri 1976*, 553 S.W.2d 479, 482 (Mo. 1977); *Matter of Report of Grand Jury Impaneled on June 22, 1979, in Shelby Cty.*, 612 S.W.2d 864, 866 (Mo. App. E.D. 1981) (“the power to investigate does not imply the power to report unless an indictment is returned”); *see also In re Voorhees*, 739 S.W.3d 178, 189 (Mo. banc 1987); *see also* Mo. Const., Art. I, § 16.

In these respects, Missouri law differs from the law in other states with more far-reaching grand-jury processes, such as Pennsylvania. The Pennsylvania Attorney

General is authorized by law to initiate a statewide investigating grand jury. *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 563 (Pa. 2018). By contrast, Missouri law does not specifically provide for statewide investigating grand juries. Pennsylvania also provides broader exceptions to traditional grand jury secrecy. Unlike Missouri, Pennsylvania investigating grand juries can issue public reports. 42 PA. C.S. § 4552. Pennsylvania law also allows a “supervising judge to permit the public release of information” from grand jury proceedings. *See In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 563 (Pa. 2018) (citing 42 Pa. C.S. § 4549(b)). Missouri law does not. *Doe*, 542 S.W.3d at 362; *see generally* LaFave, et al., *Grand Jury Reports*, 3 CRIM. PROC. § 8.3(h) (4th ed.) (explaining that such grand jury reports are not authorized in all states).

Administrative Collection of Confidential Records

For these reasons, and in the interest of maximizing public disclosure, the Attorney General has not employed a grand jury in this investigation. Under Missouri law and Missouri’s legal traditions, a grand-jury investigation would have been poorly suited to a process that resulted in a public report regarding an issue that encompassed many individual misdeeds across many decades and jurisdictions. Grand juries may be used to prosecute individual cases of abuse, however. The Attorney General is referring for prosecution every individual case identified through this investigation that might warrant prosecution to the appropriate county

prosecutor or circuit attorney for prosecution, which includes twelve cases in different counties.

In lieu of grand-jury subpoenas, therefore, the Attorney General served formal investigative subpoenas on the dioceses to obtain access to all relevant records. Through these investigative subpoenas, the AGO was able to review and inspect diocesan files and personnel records, subject to a framework that ensures compliance with state and federal laws that govern the privacy of personnel records and medical-treatment records. The Attorney General also obtained sworn affidavits attesting to the dioceses' compliance with the subpoenas and to the completeness of the records produced. Diocesan personnel have attested, under oath, that all records subject to investigative subpoenas have been produced for review and inspection, and they have attested that no records requested were withheld from the Attorney General's Office.

In addition, the Attorney General's Office engaged in on-site examination and inspection of files at all four dioceses to ensure the completeness of the review. The dioceses have been cooperative throughout this process, and the Attorney General's Office is not aware of any instance in which any requested record was withheld.

Moreover, the AGO has taken significant steps to ensure the accuracy and completeness of the records produced for inspection, and to ensure that every possible avenue for victims to come forward was available. From the outset of the

investigation, the Attorney General's Office established a hotline for victims and set up multiple avenues for victims to reach out to the AGO. The Attorney General's Office has followed up with every victim, victims' family members or friends, and other concerned citizens who came forward with information. As a result, the Attorney General's Office has interviewed the victims who came forward, as well as family members of victims, some of whom have agreed to make their statements part of this report.



III. Operation of Missouri Statutes of Limitations on Sex Abuse Cases

Criminal Statutes of Limitations

Missouri law has changed several times over the years with respect to statutes of limitations applicable to sex crimes. As a result, determination of the appropriate statute of limitations often depends on the age of the victim, the circumstances of the crime, and the year in which the crime occurred.

Missouri Revised Statutes § 556.036 governs most criminal statutes of limitations. However, § 556.037, RSMo, governs the statutes of limitations for criminal prosecutions of sexual offenses involving juvenile victims and supersedes the statute of limitations set forth in §556.036, RSMo.

1. In 1996, § 556.037, RSMo, read as follows:

The provisions of section 556.036, to the contrary notwithstanding, prosecutions for unlawful sexual offenses involving a person seventeen years of age or under must be commenced within ten years after the commission of the offense.

2. On August 28, 1997, § 556.037 was amended to read as follows:

The provisions of section 556.036, to the contrary notwithstanding, prosecutions for sexual offenses involving a person eighteen years of age or under must be

commenced within ten years after the victim reaches the age of eighteen.

3. On June 17, 2004, § 556.037 was amended, yet again, to read as follows:

Notwithstanding the provisions of section 556.036, prosecutions for sexual offenses involving a person eighteen years of age or under must be commenced within twenty years after the victim reaches the age of eighteen unless the prosecutions are for forcible rape, attempted forcible rape, forcible sodomy, kidnapping, or attempted forcible sodomy in which case such prosecutions can be commenced at any time.

Missouri courts have held that statutes of limitations are procedural in nature, in that they prescribe a method for enforcing rights or obtaining redress for their invasion and do not affect any existing substantive right or correlated duty. *See Stewart v. Sturms*, 784 S.W.2d 257, 261 (Mo. App. 1989) (en banc). Procedural rules apply to all actions in progress, whether commenced before or after the enactment of the legislation. *Id.* An individual cannot claim a vested right in a particular mode of procedure for the enforcement or defense of his rights, and where a new law deals

only with procedure it applies to all actions, including those pending or filed in the future. *See State v. Kumer*, 741 S.W.2d 285, 289 (Mo. App. E.D. 1989).

In *State v. Casaretto*, the Court addressed whether the previous statute making a three (3) year statute of limitations for sexual assault applied when a new ten (10) year statute of limitations had been enacted for sex offenses involving victims under the age of seventeen (17). 818 S.W.2d 313 (Mo. App. E.D. 1991). In *Casaretto*, the defendant was charged, in 1990, with sexual assault in the first degree for having sexual intercourse with a fourteen year old girl between August 1, 1985, and December 31, 1985. *Id.* at 314. The Court held that § 556.037 was not an *ex post facto* violation and the statute of limitations had not expired, as the enactment of § 556.037 extended the statute of limitations before the previous statute of limitations had lapsed. *Id.* at 317. The Court expressly stated, “[w]e choose not to give every criminal a constitutional right to rely on all procedural rules as they existed at the time of the commission of the offense. Such a ruling is unsupported by case law and would unnecessarily retard efficiency in administering the courts.” *Id.*

For any incident wherein the appropriate charge is Rape in the First Degree, Attempted Rape in the First Degree, Sodomy in the First Degree, or Attempted Sodomy in the First Degree, there are no statutes of limitations. These offenses became law on August 28, 2013.

For any incident wherein the appropriate charge is Forcible Rape, Attempted Forcible Rape, Forcible Sodomy, Attempted Forcible Sodomy, Sodomy, or Attempted Sodomy, there are no statutes of limitation if the crime(s) occurred on or after March 6, 1999. If the crime occurred between January 1, 1995, and March 5, 1999, the statute of limitations expires three (3) years from the date of the offense. If the crime occurred between August 28, 1980, and December 31, 1995, there are no statutes of limitations if: 1) the crime caused the victim serious physical injury; 2) the crime involved a dangerous instrument or deadly weapon; or 3) the victim was subjected to more than one actor. If none of these circumstances exist with respect to conduct during this time period, then the statute of limitations expires three (3) years from the date of the offense. If the crime occurred between January 1, 1979, and August 28, 1980, there is no statute of limitation if: 1) the crime caused the victim serious physical injury; or 2) the crime involved a deadly weapon. If neither of these circumstances exists, the statute of limitations expires three (3) years from the date of the offense. All other sex crimes involving adult victims have a statute of limitations of three (3) years from the date of the offense.

If the victim was a juvenile when subjected to a sex crime, different statutes of limitation apply, depending upon when the crime occurred. If the relevant statute of limitations would have expired *after* Missouri law expanded the statute of limitations, the offense gets the benefit of the subsequent changes.

For any felony sexual offense occurring before August 28, 1987 (except forcible rape, sodomy or an attempt thereof), the statute of limitations expires three (3) years from the date of the offense. For any misdemeanor sexual offense occurring before August 28, 1987, the statute of limitation was one (1) year.

For any felony sexual offense (except forcible rape or sodomy or an attempt thereof) occurring between August 28, 1987, and August 27, 1990, in which the victim was seventeen (17) years of age or younger at the time of the offense, the statute of limitations expired ten (10) years from the date of the offense. For any misdemeanor sexual offense occurring between August 28, 1987 and August 27, 1990, in which the victim was seventeen (17) years of age or younger, the statute of limitations expired five (5) years from the date of the offense.

For any sexual offense occurring between August 28, 1990, and August 27, 1996, in which the victim was seventeen (17) years of age or younger at the time of the offense, the statute of limitations expired ten (10) years from the date of the offense. Note, there are still no statutes of limitation for forcible rape/sodomy/attempt charges occurring prior to January 1, 1995, with the requisite facts and is not affected by the three (3) statutes of limitation for forcible rape, forcible sodomy, and attempts thereof between January 1, 1995, and March 5, 1999.

For any sexual offense occurring between August 28, 1997, and June 16, 2004, in which the victim was eighteen years of age or younger at the time of the offense, the statutes of limitation expired ten (10) years after the victim turned eighteen (18). Note, the statute of limitations is not affected by the three (3) statutes of limitation for forcible rape, forcible sodomy, and attempts thereof between January 1, 1995, and March 5, 1999. Further, if the appropriate charge is forcible rape, forcible sodomy, or an attempt thereof and the offense(s) occurred between March 6, 1999, and June 16, 2004, there are no statutes of limitation.

For any sexual offense (except forcible rape or sodomy or an attempt thereof as outlined above) occurring between June 17, 2004, and December 31, 2016, in which the victim is eighteen years of age or younger at the time of the offense, the statute of limitations expires twenty (20) years after the victim turns eighteen (18).

For any sexual offense (except forcible rape or sodomy or an attempt thereof as outlined above) occurring between January 1, 2017, and August 27, 2018, in which the victim was eighteen (18) years of age or younger at the time of the offense, the statute of limitations expires thirty (30) years after the victim turns eighteen (18).

For any sexual offense occurring after August 28, 2018, in which the victim was eighteen (18) years of age or younger at the time of the offense, there are no statutes of limitation.

Civil Statutes of Limitations

The statute of limitations for civil claims of childhood sexual abuse have also changed over time in Missouri. Originally, there was no statute of limitations specific to civil claims of childhood sexual abuse. Instead, victims and courts used the statute of limitations for common law claims such as battery and “other personal injury.” That changed, however, in 1990 with the addition of § 537.046 to the Missouri Revised Statutes. In 2004, the statute was amended to its present form.

The changes to the applicable statute of limitations in 1990 and then 2004 were made not only to the length of time permitted to bring claims of childhood sexual abuse – the actual limitations period – but also to the standard for when claims “accrued,” or, in other words, when the limitations period begins to run. Not only has the Missouri General Assembly made significant changes to the statute of limitations for claims of childhood sexual abuse, but Missouri courts have also extensively analyzed the various provisions of Missouri law – both statutory and common law – concerning the applicable statute of limitations both before the statutory changes and afterwards.

Before the specific statute of limitations for childhood sexual abuse claims became law in 1990, “the applicable statutes of limitation were § 516.140 (prescribing the statutes of limitation for battery); § 516.120 (prescribing the

statutes of limitation for other personal injury); § 516.100 (specifying the test for determining the accrual of a cause of action); and § 516.170 (providing that the statute of limitations does not begin to run as to a minor until the attainment of the age of 21 years).” *Harris v. Hollingsworth*, 150 S.W.3d 85, 87 (Mo. App. W.D., 2004).

For battery, the statute of limitations is two years, as it has been for more than a century. Similarly, the statute of limitations for “other personal injury” has long been five years. Which of these two statutes applies to certain claims depends on the facts alleged. *See Sheehan v. Sheehan*, 901 S.W.2d 57, 58–59 (Mo. banc 1995). Because “[g]enerally, acts of sexual abuse involve acts of touching, and hence are battery actions,” prior to 1990 courts routinely applied a two year statute of limitations to child sexual abuse claims. *Id.* (citing *Sheehan*, 901 S.W.2d at 58; *K.G. v. R.T.R.*, 918 S.W.2d 795, 797 (Mo. banc 1996)).

The actual limitations period is only part of the analysis (and the relatively easy part, at that) as to when civil claims for childhood sexual abuse must be made or are potentially cut off. “A cause of action for battery or assault is deemed to accrue not ‘when the wrong is done ..., but when the damage resulting therefrom is sustained and is capable of ascertainment....’” *Sheehan*, 901 S.W.2d at 58 (citing Revised Statutes of Missouri § 516.100). “Damage is ascertainable when the fact of damage ‘can be discovered or made known,’ not when a plaintiff actually

discovers injury or wrongful conduct.” *Id.* at 58-59 (citing *Chemical Workers Basic Union, Local No. 1744 v. Arnold Savings Bank*, 411 S.W.2d 159, 163–65 (Mo. banc 1966); *Jepson v. Stubbs*, 555 S.W.2d 307, 312–13 (Mo. banc 1977); *Dixon v. Shafton*, 649 S.W.2d 435, 438–39 (Mo. banc 1983)). “When damage is ascertainable is an objective determination.” *Sheehan*, 901 S.W.2d at 59 (citing *Anderson v. Griffin, Dysart, Taylor, Penner & Lay, P.C.*, 684 S.W.2d 858, 860–61 (Mo. App. W.D., 1984)).

Thus, when civil claims for childhood sexual abuse were analyzed under the general statute of limitations provisions prior to 1990, a claim accrued not “when the wrong [was] done ... but when the damage resulting therefrom [was] sustained and [was] capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.” § 516.100, RSMo.

Courts have extensively reviewed the provision establishing when a claim has accrued, particularly the “capable of ascertainment” requirement in the law. And it is no easy task. Even the Supreme Court of Missouri has said “what the legislature meant by the phrase that the damages must be ‘sustained and ... capable of ascertainment’” is the “more difficult issue, and one as to which Missouri opinions have not always been wholly consistent.” *Powel v. Chaminade Coll. Preparatory, Inc.*, 197 S.W.3d 576, 581–85 (Mo. banc 2006).

In *Powel*, the Supreme Court of Missouri explored this difficult standard and noted “a consistent approach is evident upon careful review of this Court’s decisions from the last 40 years: the statute of limitations begins to run when the ‘evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.’” *Id.* at 582. The Court then applied this standard in the context of claims involving repressed memory, which is often the case in child sexual abuse cases.

The Court concluded that if “the memory of the wrong was repressed before the victim had notice both that a wrong had occurred and that substantial damage had resulted, or before the victim knew sufficient facts to be put on notice of the need to inquire further as to these matters, then the claim would not yet have accrued at the time that the victim repressed his or her memory of the events.” *Id.* at 584.

Thus, prior to 1990, the statute of limitations period for claims of childhood sexual abuse involving repressed memories did not accrue or begin to run “until the memories were regained” because even though “the victim might have suffered damage, the victim would not have sufficient notice to have a duty to inquire further. Only when he or she regained the repressed memories would the victim for the first time have ‘reason to question’ defendant’s conduct and have information sufficient ‘to place a reasonably prudent person on notice of a potentially

actionable injury.’” *Id.* (quoting *Business Men’s Assur. Co. of Am. v. Graham*, 984 S.W.2d 501, 507 (Mo. banc 1999)).

In 1990, the Missouri General Assembly passed a law specifically providing for a claim of childhood sexual abuse, along with a limitations period for the claim. The law, codified in § 537.046, RSMo, provided as follows:

1. As used in this section, the following terms mean:

(1) **“Childhood sexual abuse”**, any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) **“Injury or illness”**, either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within five years of the date the plaintiff attains the age of eighteen or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever later occurs.

3. This section shall apply to any action commenced on or after August 28, 1990, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

(Emphasis in original).

Following passage of § 537.046 in 1990, a constitutional challenge was made to the provision removing the bar to actions that would have been barred

prior to 1990 – subsection three of § 537.046. The Supreme Court of Missouri considered the matter in *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 342 (Mo. banc 1993), and analyzed it under the Missouri constitutional provision prohibiting retrospective operation of a law, Article I, Section 13.

The Supreme Court of Missouri held in *Doe v. Roman Catholic Diocese of Jefferson City* that “once the original statute of limitation expires and bars the plaintiff’s action, the defendant has acquired a vested right to be free from suit, a right that is substantive in nature, and therefore, article I, section 13, prohibits the legislative revival of the cause of action.” *Id.* at 341. According to the Court, therefore, if a child sexual abuse claim was previously barred by the statute of limitations, then the 1990 law establishing a new statute of limitations “does not apply retroactively to resuscitate” the claim. *Harris*, 150 S.W.3d at 87.

In 2004, the Missouri General Assembly made amendments to the law governing the limitations period for claims of childhood sexual abuse – § 537.046 of the Missouri Revised Statutes. The law now provides as follows:

1. As used in this section, the following terms mean:

(1) “**Childhood sexual abuse**”, any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060,

566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, or section 568.020;

(2) **“Injury”** or **“illness”**, either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date the plaintiff discovers, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs.

3. This section shall apply to any action commenced on or after August 28, 2004, including any action which would have been barred by the application of the statute of limitation applicable prior to that date.

(Emphasis in original).

Under existing law, childhood sexual abuse claims must be commenced by the later of the following: within 10 years after turning 21 years old or 3 years after the victim discovered or reasonably should have discovered that the injury or illness was caused by the childhood sexual abuse.

As it did in 1990, the Missouri General Assembly sought to apply the statute of limitations for childhood sexual abuse claims to those actions barred by the statute of limitations prior to the effective date of the amendment in 2004.

Although the Supreme Court of Missouri held a similar provision unconstitutional in *Doe v. Roman Catholic Diocese of Jefferson City*, the Court specifically

declined to determine the issue with respect to the 2004 amendment in *State ex rel. Heart of Am. Council v. McKenzie*, 484 S.W.3d 320, 328 n.8 (Mo. banc 2016).

The Supreme Court of Missouri in *State ex rel. Heart of Am. Council*, did, however, hold that by its terms, “section 537.046 creates a cause of action only against the person who allegedly committed the abuse. It does not provide a cause of action for childhood sexual abuse against non-perpetrators such as the Boy Scouts organization.” *Id.* at 322. As such, the cause of action and associated statute of limitations in section 537.046 does not apply to claims against entities or organizations such as the Roman Catholic Church. There remain, however, common law claims such as battery and negligence available to victims, which are subject to separate statute of limitations as discussed previously.² *See id.* at 326.

² Another statute, section 516.371 of the Missouri Revised Statutes provides a separate limitations period for claims of personal injury caused by sexual contact:

Notwithstanding any provision of law to the contrary, there shall be a ten-year statute of limitation on any action for damages for personal injury caused to an individual by a person within the third degree of affinity or consanguinity who subjects such individual to sexual contact, as defined in section 566.010, RSMo.



IV. Reports of Offense Against a Minor Under Missouri Criminal Law

01

Priest accused of sexual abuse of elementary school aged child from 1967 through 1971. When allegation was made in 1991, Bishop publicly commented on the unfairness of victim suing as “John Doe” and attempted to identify the victim in the news media.

Numerous additional reports of abuse of additional elementary school aged children received after 2000. Diocese, under successor Bishop, sought laicization of Priest in 2004.

Prosecution barred by statute of limitations.

02

Priest accused in 2002 of sexual abuse of an elementary school aged child in 1988. Report stated that Priest had molested child and had attempted to enter child’s room while an overnight guest at child’s home. Child placed a chair under the bedroom doorknob to prevent Priest from entering his room.

Victim’s parent reported the 1988 incident to his current pastor. Both parent and victim’s uncle reported that pastor indicated he was aware of other similar reports of sexual misconduct by Priest 02.

Priest 02 had, before 1988, been admonished not to be involved with minors. The 1988 abuse occurred during an overnight trip with minor children and their parents.

Prosecution barred by the statute of limitations.

03

Priest accused in 2009 of sexual misconduct involving inappropriate electronic communication with an elementary school aged child. Communication occurred in 2004.

Priest removed from ministry temporarily and later removed from active ministry. Diocese sought laicization but Priest 03 did not consent, therefore, the process continues. Meanwhile, Priest 03 is limited to prayer and penance.

Referred for potential criminal prosecution.

04

Priest accused in 2002 of abuse of a high school aged child at a seminary in the 1960s. Priest served in leadership of high school seminary for decades. After accusations were made, Priest 04 resigned as bishop of another diocese where he had been serving and acknowledged the claims of abuse.

Lawsuits and reports of abuse spanned from the 1960s to the 1980s and involved other priests working at the seminary besides Priest 04. Records show that priests working in leadership of the seminary knew of each other's inappropriate conduct and molestation of students.

Priest 04 served as bishop of two dioceses outside of Missouri until admitting misconduct in 2002. After resignation as bishop and admission of abuse, Priest 04 retained the title "most reverend" and "bishop" until his death in 2012.

Prosecution barred due to the death of priest.

05

2019 report of sexual misconduct relating to violation of boundary issues with elementary school aged children. Diocesan review board inquired of children and their families. Investigation continues.

Review pending within diocese.

06

2003 report of sexual abuse – unclear when reported abuse occurred. Priest 06 allowed leave of absence in 2004. Accusation not determined by the diocese but

Priest 06 removed from ministry out of concern for safety of children. Priest 06 died in 2013.

Prosecution barred due to the death of priest.

07

A 2011 request was received from a bishop in Ireland from diocese relating to Priest 07's history in the diocese. 2003 request from Irish bishop revealed only that Priest 07 was removed from active ministry.

In 1996 Priest 07 admitted the allegation of abuse and molestation of a high school aged seminarian studying at the seminary to which Priest 07 was assigned. In 2004, additional reports of molestation of high school aged seminarians were determined to be credible over the denial of Priest 07.

After reports of abuse were made in 2002, Priest 07 was removed from ministry and in 2003 allowed to retire from active ministry. He appears to have been allowed to relocate outside of the United States later in 2003.

Referred for potential criminal prosecution.

08

Reports of abuse received in 1998 and 2002 and related to conduct occurring in the 1940s (before the establishment of the diocese) and 1960's. Although Priest 08 was deceased at the time, the reports were deemed to be credible. Priest 08 was absent from ministry for an extensive period of his life.

Priest 08 died in 1989.

Prosecution barred due to the death of priest.

09

In 2011, images of pornography and possibly child pornography found on Priest 09's computer. Priest 09 was working at diocesan high school. Priest 09 was removed from high school and public ministry and case sent to Rome for adjudication. Images were also reported to Federal Bureau of Investigation and U.S. Attorney's Office which ultimately did not proceed with charging Priest 09 with criminal conduct due to uncertainty about the age of those depicted. Whether images depicted minors was unclear.

Previously referred for criminal prosecution.

10

Reports of numerous acts of sexual misconduct, boundary issues and fondling received beginning with an anonymous letter in 2010 and continuing through 2017. Numerous instances of Priest 10 sharing a bed with elementary school aged children and sharing overnight accommodations with elementary school aged children during recreational trips. Reports of Priest 10 having unsupervised visits with elementary school aged children in rectory. Local police department opened investigation into Priest 10 based on reports of abuse.

In 2016, Priest 10 placed on leave by diocese. Diocese is pursuing laicization of Priest 10.

Referred for potential criminal prosecution.

11

In 2003, the diocese received two allegations of sexual abuse against Priest 11 relating to conduct in 1960s. Priest 11 was still living at the time but retired. Reports found by diocese to be credible despite denials by Priest 11.

Due to priest's age, health and retired status, laicization was not pursued but priest was removed from public ministry on receipt of complaints. Priest 11 died in 2009.

Prosecution barred due to death of priest.

12

Diocese dealt with issues presented by priest during formation in the seminary and soon after his ordination in 1983.

Leave of absence granted in 1996. It appears that priest was credibly accused by that time although no records of the accusation could be found. Priest 12 appeared to be living outside the diocese and was granted permission to celebrate mass and other sacraments from time to time before his death in 2017.

Prosecution barred due to death of priest.

13

Report of long term pattern of sexual abuse of high school aged children and sexual relations with adults. Priest 13 admitted to the reports of abuse of minors and of the sexual relationships with adults. Priest 13 abandoned the ministry in

1991 and his whereabouts were unknown to the diocese during its audit of sexual abuse in 2018. Priest 13 is believed to have civilly married.

Upon discovery of Priest 13's status in 2018, laicization proceedings were undertaken by the diocese.

Referred for potential criminal prosecution.

14

Reports of sexual abuse of minors received in 2003. One victim did not want report to be public or for any relief other than priest's removal from public ministry. The other report came from victim's daughter and was repudiated by victim himself. Both occurrences of abuse dated to the 1960s.

It appears Priest 14 was removed from ministry only after an inquiry from a bishop from outside of the United States, to where Priest 14 planned to retire, was received several months after allegations were received. Reports and the efforts of the diocese in attempting to investigate them were related to the bishop outside of the United States.

Officially removed from any ministry except in his home by decree of the Missouri bishop in 2018. Resides outside of Missouri in retirement.

Prosecution barred by the statute of limitations.

15

Report of long term sexual abuse of an elementary school aged child received in 2006 relating to conduct from the 1960s. Conduct occurred in diocese and during a trip outside of the United States. Priest 15 died in 1985.

Prosecution barred due to the death of priest.

16

Report of long term sexual abuse of high school aged child over the course of several years into victim's adulthood. Abuse occurred between 1986 and 1993 and was reported to diocese in 1996. Abuse began during an overnight trip with Priest 16 and victim to witness the ordination of a bishop outside the diocese.

Priest 16 was removed from ministry upon receipt of this report of abuse. Priest 16 sought laicization and was dispensed from vows and removed from priesthood.

A second report of abuse of a high school aged child was received in 2005 and related abuse beginning in 1995.

Referred for potential criminal prosecution.

Lawsuit filed in 2019 alleging sexual abuse of an elementary school aged child while serving as an altar server in the 1970s.

A report of abuse was received by another victim in 2018 alleging specific practices of fondling while an altar server and that practice of fondling altar servers was well known amongst boys of Priest 17's parish during the 1970s.

A report of abuse of two elementary school aged students was received in 2002. Report detailed grooming techniques to include providing children with cigarettes, alcohol and money and taking children on outings and trips.

Priest 17 was removed from ministry repeatedly throughout his career. Parishioners were told leaves were "due to health."

Victim 17 recounted an instance of sexual abuse at the hands of Priest 17 in 1968 when victim was 10 years of age. Abuse included providing victim with alcohol during an out of town trip. Victim 17 reports he still suffers from anxiety as a result of this incident.

Victim 22 recounted an instance of abuse at the hands of Priest 17 during the 1970s while Victim 22 was serving as an altar server during his elementary school years in Priest 17's parish. Victim 22 described the fondling as something that happened repeatedly and that Victim 22 treating other children likewise at this

time. Victim 22 recounted Priest 17's transfer from his parish in the late 1970s or early 1980s.

Priest 17 died in 1990.

Prosecution barred due to the death of Priest.

18

A report in 2015 detailed unwanted and inappropriate hugging and kissing of an elementary school aged child. Priest 18 invited victim to meet after hearing victim's confession. Priest 18 was immediately removed from ministry and later allowed to return to ministry in Missouri for a period of time. Diocesan review board confirmed report was a "boundary violation" but did not violate the 2002 Charter. Diocese and Priest 18's religious order prohibited Priest 18 from further ministry in dioceses. Priest 18 appears to have left the United States in 2019.

Referred for potential criminal prosecution.

19

A report of sexual misconduct over years by Priest 19, a religious order priest, was received in 2018. Priest 19 abused two children beginning during their

elementary school years and continuing through adulthood. Priest 19 died in 1999. His reported abuse spanned the 1970s and 1980s.

Prosecution barred due to the death of priest.

20

Priest 20 was originally ordained in a diocese in Pennsylvania. In 1968, he was given a directive by the diocese but refused to comply and left the diocese.

In 1975, bishop in Pennsylvania informed bishop in Missouri that Priest 20 “caused scandal” in Pennsylvania and that he would not recommend him for any further assignment as a priest. Despite this warning and information, Priest 20 was granted faculties in a Missouri diocese.

By 1978, Priest 20 had been assigned to parishes and records reveal numerous complaints about inappropriate social contact with children and adults.

In 2008, Priest 20, apparently out of Missouri at this time, sought permission from his home diocese in Pennsylvania to celebrate mass in Florida. Diocese in Pennsylvania first learned of Priest 20’s years of service in Jefferson City at this time. In 2009, Diocese in Pennsylvania asks for information on Priest 20’s service in Jefferson City.

Victim 24 recounted an instance of abuse at the hands of Priest 20 during his high school years in the late 1970s. The incident occurred at Priest 20’s private

residence. Victim 24 stated he was served alcohol and became incapacitated at which time Priest 20 took advantage of him in the bedroom of his residence. Victim 24 reported the incident to his family who unsuccessfully sought to bring the abuse to the attention of the diocese at the time of its occurrence.

Reports of sexual abuse against Priest 20 was received in 2018. First report of abuse occurred in 1977-1979. Second instance of abuse occurred in 1978. Third instance of abuse occurred in 1987. Priest 20 died in 2009.

Priest 20 was essentially absent without leave from his incardinated diocese when presented to a Missouri diocese in 1975 and diocese knew of this status directly from a Bishop in Pennsylvania. Obviously, Priest 20 should have never been granted faculties by and assigned parishes in Missouri.

Prosecution barred due to the death of priest.

21

Priest 21 was ordained in 1982 but had immediate and ongoing difficulties with his priestly vows. He engaged in a long term relationship with an adult, left the priesthood in 1987 and was laicized in 1993.

A report of sexual abuse occurring in the early 1980s was received in 2002. A second report against Priest 21 was received in 2003. Second report detailed abuse occurring while victim was attending a high school seminary in the diocese. Civil lawsuits alleging abuse were filed. Some claims appear to have been dismissed by Court.

Prosecution barred by the statute of limitations.

22

A report of sexual abuse of a high school aged child occurring in 1957 was received in 2011. Additional instances of abuse involving elementary school aged child and occurring in the 1950s were reported in 2018 and 2019. Priest 22 was taken out of ministry assignments for extended periods of time during the late 1960s until his death in 1979. He was unsuccessfully returned to ministry for brief periods of time between 1963 and 1979 including parish assignments.

By 1963, Priest 22 was first taken out of ministry due to reports of inappropriate familiarity with elementary school aged girls in three consecutive assignments.

Prosecution barred due to the death of Priest.

23

Priest 23 was taken out of ministry in 1994 after complaints from parish at which he was serving. Complaints did not relate to sexual abuse or misconduct. Priest 23 returned to parish ministry and was also given leadership post within diocese.

In 1997, diocese received numerous reports of “boundary issue” violations against elementary school aged children of parish including inappropriate and unwanted touching. Priest 23 was removed from ministry again. Returned to ministry 1998-2002 until formal investigation of 1997 misconduct was convened. Reports of victims were credited by review board and Priest 23 was temporarily and then permanently removed from all public ministry and granted retirement.

Claim that Priest 23 appeared to be engaging in priestly ministry in Kansas while in retirement at a nursing home was responded to by the diocese.

Referred for potential criminal prosecution.

24

A report of sexual abuse of an elementary school aged child occurring in the 1960s was received by Priest 24’s home diocese in Illinois. Presumably, this abuse

was reported to the diocese in Illinois. There is no record of it in the records of the Missouri diocese. Priest 24 spent a year out of priestly ministry outside of Missouri. Priest 24 then sought assignment and received the same to parish and other ministries in Missouri in 1987. There is a letter of good standing from the bishop in Illinois to the bishop in Missouri from 1994 vouching for Priest 24's good standing but mentioning "regulations and stipulations" made by the bishop to ensure continued good standing.

Report of sexual abuse of an elementary school aged boy occurring in the church sacristy and rectory in 1992 was received in 2018. A second instance of abuse occurring in the 1980s was reported in 2019. The second instance of abuse occurred at the home of the victim where Priest 24 was a guest.

Priest 24 died in 2006.

Prosecution barred due to the death of priest.

25

A report of sexual abuse of an elementary school child was received in 2005 from the victim's mother. The abuse occurred in the 1980s. Priest 25 was part of a religious order. Victim's mother had worked with Priest 25 and had entertained

him and other members of the religious order at her home during the period of abuse.

No record of Priest 25's service in Missouri other than reports of abuse.

Prosecution barred by the statute of limitations.

26

A report of abuse was received in 2007 and related to the sexual abuse of an elementary school aged child in the 1980s at an elementary school. Victim was provided counseling services. No record of Priest 26's service in Missouri other than reports of abuse.

Prosecution barred by the statute of limitations.

27

Two reports of sexual abuse of elementary school children were received. Abuse occurred in school setting and victimized elementary school aged children. Religious order ministry in Missouri appears to be elementary school teaching. No record of Priest 27's service in Missouri other than reports of abuse.

Prosecution barred by the statute of limitations.

28

A report of extensive sexual abuse of an elementary school aged girl during the 1950s was received in 2003. Priest 28 died in 1970.

Prosecution barred due to the death of priest.

29

A diocesan priest reported to have committed sexual abuse against a high school aged child during the 1950s. The report of abuse came in 2007. Priest 29 died in 1995.

Prosecution barred due to the death of priest.

30

A diocesan priest reported to have committed sexual abuse against a high school aged child during the 1970s. An additional report was made of abuse against an adult seminarian during the 1990s.

Victim 25 reported abuse by Priest 30 while a seminarian in 2010. Victim 25 resisted advances by Priest 30 who counseled him to keep matter quiet or Victim 25 would not be able to become a priest.

Both reports were received after the Priest 30's death in 2015.

Prosecution barred due to the death of priest.

31

Priest 31 reported to have committed sexual abuse against a high school aged child during the 1980s. Report was received in 2002.

Priest 31 was given leave in 1993 and moved outside of Missouri in 1997.

Another report of 1970s sexual abuse of a high school aged child was received in 2009 and became the subject of a lawsuit in 2010. At the time the report was received, Priest 31 was serving with a women's shelter outside of Missouri. Priestly faculties were removed by diocese in 2010.

Prosecution barred due to the statute of limitations.

32

Allegations of sexual abuse of a high school aged child from the 1970s received in 2002. Independent Review Board finds allegation credible and bishop placed Priest 32 on administrative leave and removed his ability to engage in ministry.

Priest 32 resisted action by the bishop but ultimately consented to retirement and the removal of his faculties in 2005. Subsequent to this consent, Priest 32 was reported to be celebrating mass publicly in a retirement home in violation of bishop's order. In 2009, Priest 32 asked for his priestly faculties to be restored which bishop denied.

In 2015, bishop instituted formal investigation of the historical abuse by Priest 32, apparently abandoning consent agreement of 2002-2005. In 2016, file reveals that Priest 32 appeared to be again exercising priestly faculties for order of religious sisters in contravention of bishop's orders of 2002 and 2015. Priest 32 died in 2019.

Prosecution barred due to the death of priest.

33

Report of sexual abuse of a high school aged victim and an elementary school aged victim were received after the death of Priest 33 who had served in the diocese. The reports related to conduct occurring in the 1980s.

Prosecution barred due to the death of priest.

34

Report of sexual abuse of a high school aged child received in 1993. Abuse occurred in 1960. Priest 34 admitted to misconduct when report received in 1993. Diocese removed priestly faculties and allowed to retire outside of diocese.

In 2003, bishop corresponded with Priest 34 outside of Missouri to reiterate that he was not to present himself as a priest nor dress in priestly garb which it appears he had been doing. Priest 34 died in 2018.

Prosecution barred due to the death of priest.

35

Numerous reports of sexual abuse of a number of minors received beginning in 1989 relating to conduct dating back to the 1970s. Priest 35 had left diocese to serve in another diocese at the time reports were received. Diocese originally deemed reports not credible. Upon receipt of additional reports of abuse from residents of a diocese in Wyoming, a criminal referral was made by that diocese.

Priest 35's faculties have been removed. Priest 35 has chosen not to participate in canonical investigation.

Previously referred for criminal prosecution.

36

A report of sexual abuse of an elementary school aged child during the 1980s was received in 2011. Diocese of Scranton, where priest was then living and serving in ministry, removed priest from ministry and notified law enforcement of allegations. Priest 36 was ultimately relieved of all priestly faculties in 2016.

Previously referred for criminal prosecution.

37

Numerous reports of sexual abuse of numerous minors beginning in the 1950s including orphaned children were received in 2002. Priest 37 was suspended from priestly faculties and later restricted in public ministry – Priest 37 died later in 2002.

Prosecution barred due to the death of priest.

38

A report of sexual abuse of high school aged girl during the 1970s was received in 2003. Upon receipt, Priest 38 retired and bishop relieved him of his priestly faculties. Priest 38 died in 2012.

Prosecution barred due to the death of priest.

39

A report of the sexual abuse of a minor from 1969 to 1977 was received in 2004. Abuse occurred outside of Missouri and included conduct while Priest 39 was serving in Missouri diocese. Priest 39 named as a credibly abused priest by two dioceses outside of Missouri.

Prosecution barred due to the death of priest.

40

A report of sexual abuse of a high school aged child occurring in 1977 was received in 2004. Priest 40 was placed on leave and allowed retirement.

During subsequent disciplinary proceedings, fact that age of child was 17 and that sexual relations with a child of that age were not considered a grave offense or “delict” in 1977 was pointed out in Priest 40’s defense. Age of victim for grave offense was not raised from 16 to 18 until 1994.

It is unclear whether or why a bishop would not be able to suspend Priest 40 from public ministry in 1977 based on a sexual relationship with a 17-year-old child.

Prosecution barred due to the statute of limitations.

41

Multiple reports of sexual abuse involving elementary school aged minors received during the 1980s and 1990s alleging abuse during the 1970s. Priest 41 died in 2012.

Prosecution barred due to the death of priest.

42

A report received in 1993 gave detailed account of sexual abuse of teenager which began in early 1980s and continued for many years. Priest 42 allowed to return to parish after a civil lawsuit filed and remained in priestly faculties until his death in 2012.

Prosecution barred due to the death of priest.

43

A report of sexual abuse was received in 2002 relating to conduct occurring in the 1960s. Priest 43 died in 1998.

Prosecution barred due to the death of priest.

44

First reports of sexual abuse of high school aged children during the 1970s were received in 1994. Upon receipt of first group of reports, Priest 44 resigned from the priesthood.

An additional report of sexual abuse of a teenaged child during the 1960s was received in 2001.

An additional report of sexual abuse of a teenaged child during the 1960s was received in 2011.

Prosecution barred either by statute of limitations or due to the death of priest.

45

Numerous instances of sexual abuse reported beginning in 1983. Reports alleged abuse from 1960s through 1980s. Priest 45 was temporarily removed from ministry but allowed to return to ministry in 1985 with restrictions. Seminarian reports continued sexual misconduct against him to bishop in 1993. Some sexual misconduct was alleged to have occurred with and witnessed by another priest.

Priest 45 was allowed retirement in 2001 and continued to have honorary “Monsignor” title.

Priest 45 denied any misconduct for decades to church superiors, even those who had access to records which confirmed some of the reports.

Prosecution barred due to the death of priest.

46

Numerous instances of sexual abuse reported.

Approximately 1981 priest accused of misconduct – confronted by bishop and Priest 46 did not deny sexual abuse of a minor – received reprimand from bishop and returned to ministry.

A 1989 review of priest noted several areas of concern including constant presence of teenaged boys in rectory doing menial work, isolated set up of Priest 46's apartment, instructions to seminarian living at priest's rectory that seminarian vacate the rectory each weekend, late night collect calls to rectory from teenaged staff, teenagers in possession of keys to rectory, cash gifts to boys.

Resigned from ministry 1990, parishioners told of Priest 46's "health problems" necessitating his removal as pastor. Laicized in 2011.

1995 correspondence from parishioner points out that Priest 46 was scheduled to speak on faith formation at a Missouri parish. Diocese prevented priest from speaking after notification.

Prosecution barred due to the death of priest.

47

Priest 47 admonished about boundaries with children in 2010 after numerous concerned parishioners contacted the diocese: multiple incidents of hugging, physical contact with children.

February 2011, after learning of child pornography and admissions of priest's child pornography "addiction" and suicide attempt, Priest 47 was still allowed limited priestly ministry. In May 2011, report to law enforcement, Priest 47 arrested, then removed from all ministry.

Federal authorities investigated and prosecuted Priest 47 for production of child pornography and sentenced to fifty years prison.

Previously referred for criminal prosecution.

48

Priest 48 withheld report of child pornography found in possession of Priest 47 for period of months before reporting conduct to law enforcement and was found guilty of a misdemeanor violation of failure to report abuse based on a

period of time after he learned of the misconduct and allowed the priest to remain on restricted ministry in the diocese without notifying law enforcement.

Previously referred for criminal prosecution.

49

Priest 49 accused of sexual abuse of a minor occurring in 1990 during an overnight visit by victim at church rectory. Report received soon after abuse happened and law enforcement was notified.

Priest 49 removed from ministry and worked outside of Missouri. Matter investigated by county prosecutor without charges.

Priest 49 laicized in 1993.

Previously referred for criminal prosecution.

50

Priest 50 abandoned priesthood in 1989 and left Kansas City. Priest 50 did not remain in touch with diocese. Priest 50 left in 1989 without any notification to diocese or his parish.

Multiple reports of sexual abuse of minors began to come in by 1990 relating to abuse.

Report indicates fellow priests were aware of apparently consensual sexual conduct being undertaken by priest with an adult in the early 1970s but did not raise them with diocese until after reports of priest's abuse of minors were received.

Reports of abuse occurring later in the 1970s were received in 2002.

Priest 50 worked in campus ministry in 1970s and 1980s and occasionally allowed adults to live with him. Priest 50 occasionally allowed adults working at his parish in the 1980s to live in the rectory.

Process of laicization undertaken by 2013. Even though priest left diocese in 1989 without authorization, church procedures require effort to contact Priest 50 and allow him to participate in process. Files do not indicate any efforts beyond mail correspondence to physically locate priest and return him to diocese for discipline.

Referred for potential criminal prosecution.

Ordained in 1979, Priest 51 sought and received leave of absence in 1986 and was civilly married in 1987.

Anonymous report to bishop of suspected relationship by priest with married woman received 1985. Records do not indicate whether this is the same woman to whom priest 51 ultimately was married.

Report of abuse of an elementary school aged child received in 1994. Victim was allowed on out of town trips with priest and visited priest in rectory residence alone during the 1980s. Abuse went on for four to five years.

Priest 51 was sued in 2008 for sexual abuse of an elementary school aged child in late 1970s through early 1980s.

Sued for an additional instance of sexual abuse during the 1980s. This report was received in 2009. Lawsuit filed in 2011 and ultimately dismissed.

Priest 51 was laicized 2018.

Prosecution barred by the statute of limitations.

A report of sexual abuse of a high school aged child was received in 2011 relating to abuse from the 1970s.

Diocese only notified Priest 51's religious order of decision of review board and religious order relating to response to credible report of abuse. Priest was serving as a parish priest and had served at a diocesan high school.

Diocesan board unanimously found allegation credible but only recommended priest submit to a "safety plan with limited faculties."

Prosecution barred due to the statute of limitations.

Report of sexual abuse received in 2008 and incorporated into a civil lawsuit filed in 2010. Abuse reported to have occurred in 1970s.

Additional report of sexual abuse of an elementary school aged child received in 2011 and related to conduct occurring in the 1970s. Abuse occurred during an overnight, out-of-town trip with victim and priest.

Bishop removed priest's faculties upon receipt of report in 2011. Priest 53 engaged in discipline process and was allowed retirement in 2014. Safety plan

limiting locations where priest can attend mass and proscribing his interactions with minors in any way imposed in 2016.

Prosecution barred by the statute of limitations.

54

A report was received in 2009 against Priest 54, a religious order priest, alleging sexual abuse of a high school aged child while serving as a confessor and spiritual advisor to the victim in 1966.

Prosecution barred by the statute of limitations.

55

A report of sexual abuse of an elementary school aged minor was received against a religious order priest at the time of the offense in 1988. After a period of absence, Priest 55 was returned to ministry in 1989. Victim again complained in 2003 of Priest 55's ability to serve in public ministry. Priest 55 was removed again at that time. Victim was a ward of religious order seminary at time of abuse.

Prosecution barred by the statute of limitations.

56

A religious order priest who served in Missouri from 1958 to 1999 was reported to have sexually abused a child in California from 1951 to 1954. The report of abuse was received after the death of Priest 56.

Prosecution barred due to the death of priest.

57

A religious order priest who served in Missouri during the 1970-1980s was reported to have abused four elementary school-aged minors during that time. Priest 57 was later transferred by the religious order to a diocese outside of Missouri.

Prosecution barred due to the statute of limitations.

58

A religious order priest who served in Missouri from 1989-90 and again from 2001-2002 was found to be in possession of child pornography and convicted of that offense in Illinois in 2006. Priest 58 admitted to his conduct and was sentenced to more than seven years in federal prison.

Previously referred for criminal prosecution.

59

A religious order priest served in Missouri from 2011 to 2012 was reported to have sexually abused a minor between 1982 and 1987. The report was credited by the order and Priest 59 was recalled from Missouri where he remains a priest under supervision of his order's provincial leadership.

Prosecution barred by statute of limitations. Any offense appears to have been committed outside of Missouri.

60

A report of abuse against a religious order priest was received in 2004. The abuse occurred between 1971 and 1972 and involved the sexual abuse of an elementary school aged child. Priest 60 died in 2006.

Prosecution barred due to the death of priest.

61

A report of 1984 abuse of minor outside of Missouri was received in 2013 by Priest 61's religious order and found to be credible. Priest 61 died in 2008.

Prosecution barred due to the death of priest.

62

A report of 1970s sexual abuse in occurring in Illinois was received in 2005. Priest 62 was moved to Missouri and ordered not to present himself as a priest or have unsupervised contact with minors. Priest 62 lived in religious order facility in Missouri during 2005-2006.

Prosecution barred due to statute of limitations. Any abuse appears to have occurred outside of Missouri.

63

Religious order priest was accused after his death of abuse of minors in Minnesota in 1964-1983. Priest 63 was stationed in Missouri from 1986-87. Priest 63 died in 2009. Priest 63 was named as credibly accused by religious order in 2015.

Prosecution barred due to the death of priest. Abuse appears to have occurred outside of Missouri.

64

Religious order priest was accused after this death of minor sexual abuse in Missouri occurring during 1969-70. Priest 64 also served in Missouri in 1998-1999 and died in 2013. Priest 64 was named as credibly accused by religious order in 2015.

Prosecution barred due to the death of priest.

65

A report of abuse against a religious order priest was received after his death in 2008. The report was of minor sexual abuse in Missouri in 1976. Named as credibly accused by religious order in 2019.

Prosecution barred due to the death of priest.

66

A report of minor sexual abuse occurring outside of Missouri in 1978 was received after the death of Priest 66 in 1983.

Prosecution barred due to the death of priest.

67

A report was received after the death Priest 67 of sexual misconduct outside of Missouri in 1963. Priest 67 assigned to ministry in Missouri from 1964 to 1966. Priest 67 died in 2013.

Prosecution barred due to the death of priest.

68

A report of sexual abuse was received after the death of Priest 68. Named by religious order as credibly accused in 2015. Priest 68 died in 1993. Account of abuse was for conduct outside of Missouri between 1971-75.

There is no record of service in Missouri but record of accusation was maintained by Missouri diocese.

Prosecution barred due to the death of priest. Abuse appears to have occurred outside of Missouri.

69

A report of sexual abuse of a minor in Missouri in 1949 was received after the death of Priest 69. Priest 69 was named by religious order as credibly accused in 2015. Priest 69 died in 1976.

Prosecution barred due to the death of priest.

70

A report of abuse of minors was received in 1993. The report detailed conduct occurring in Missouri during the 1960s. Priest 70 died in 1995.

Records do not indicate what, if any, action was taken upon receipt of the report of abuse.

Prosecution barred due to the death of priest.

71

Accused in 2011 of sexual abuse of a minor in early 1970s outside of Missouri. Priest 71, a religious order priest, served in Springfield diocese in 1971-1972.

Prosecution barred due to statute of limitations. Any abuse appears to have occurred outside of Missouri.

72

Accused of misconduct occurring in 1982. Report received in 1985 from victim. In that same year, Priest 72 was suspended from orders by bishop in Wisconsin while in residence in Missouri. Suspension communicated to Missouri diocese.

Prosecution barred by statute of limitations. Any abuse may have occurred outside of Missouri.

73

Accused in 2015 after his death of sexual abuse of a minor occurring in 1975-76. The victim was serving as an altar server while Priest 73 was pastor.

Soon after instance, Priest 73 was moved within diocese even though he had been pastor at current parish for only one year. Records also indicate priest was accused of and admitted to inappropriate, non-consensual sexual advance upon an adult parishioner in 2005. Priest 73 died in 2014.

Prosecution barred due to the death of priest.

74

Numerous allegations of sexual abuse of minors. A 1982 report lead to suspension of priest from ministry from 1982-1984 after which he was returned to active ministry with restrictions as to interactions with youth. Sexual misconduct again alleged in 1998 after which Priest 74 was removed from ministry and retired

After public announcement of allegations against priest were made in 2002, additional accounts of sexual misconduct by priest at diocesan high schools were lodged. This conduct occurred in 1968-1973. Priest 74 was laicized in 2006.

Referred for potential criminal prosecution.

75

Numerous reports of sexual abuse of minors by priest including forcible rape in 1960s were received after the death of Priest 75. Abuse was against elementary school aged children attending the school at which Priest 75 was pastor. Priest 75 would often have victims taken out of classes to see him alone in the rectory.

Victim reported informing another priest of Priest 75's abuses in confession and confessor priest intimidated victim, then still a young elementary school aged child, and admonished her for mentioning abuse.

Priest 75 died in 1971.

Prosecution barred due to the death of priest.

76

A report of sexual abuse was received in 2006 and credited and announced by the diocese. Abuse occurred during the 1960s. A second instance of abuse was reported by another victim in 2007 also occurring in the 1960s. Priest 76 died in 1981.

Prosecution barred due to the death of priest.

77

Priest 77 sought and was granted laicization in 1976. Laicization was not related to misconduct but desire of priest to marry.

Report of sexual abuse of a minor was received after Priest 77 was laicized. Victim 09 reported extensive abuse by Priest 77 in the 1960s during her elementary school aged years. Priest 77 died in 2007.

Prosecution barred due to the death of priest.

78

A report of sexual abuse of minor for whom priest was acting as a spiritual advisor was received after Priest 78's death. Instance of abuse was from 1973. Records also indicate a report of an unwanted sexual advance towards a young adult in 1971.

Prosecution barred due to the death of priest.

79

Reports of sexual abuse of multiple minors received after priest's death. Instances of abuse occurred during 1970s and 1980s. First report received in 1985.

Records reveal a complaint about priest's behavior including having boys spend the night at the rectory and then excusing them from the parish school the next day and that priest was a suspected pedophile. Complaint was lodged by the principal of the parish school and brought to the attention of the Bishop. Former principal reiterated her account of the complaint to bishop to the AGO in 2019 and former bishop responded. Former bishop noted that he admonished Priest 79 against unsupervised contact with children. Priest 79 was transferred to another parish in 1985.

Additional reports of abuse were received in 2002 and 2017 relating to conduct in the 1970s and early 1980s. Priest 79 died in 2017.

Prosecution barred due to the death of priest.

80

Multiple reports of sexual misconduct with minors occurring in the 1960s and 1970s were received after Priest 80 retired in 2011. Records do not indicate if Priest 80 is under any restrictions from public ministry.

Victim 14's father related an account of sexual abuse against Victim 14 by Priest 80 in 2000 while Victim 14 was a high school aged child. Victim 14's father related that he spoke to Priest 80 who acknowledged and apologized for his

actions. Victim 80's father reported the incident to the dioceses and law enforcement.

Victim 16 related an account of abuse against him by Priest 80 in 1972 while Victim 16 was a high school seminary student. Victim 16 reported that Priest 80 provided him with alcohol at the parish rectory and abused him after Victim 16 was incapacitated due to drinking. Victim 16 reported that Priest 80 apologized to him soon after the incident.

Referred for potential criminal prosecution.

81

Report of sexual misconduct with a minor during an overnight trip in 1972. Additional report of sexual misconduct by an anonymous victim occurring in the 1980s. Priest 81 is retired from ministry and living in a nursing home. Diocese took action to restrict Priest 81's ministry after a 2018 review of an account of sexual misconduct by the priest during the 1980s.

Prosecution barred by statute of limitations.

82

2002 report received regarding abuse by Priest 82 in 1982. Abuse involved molestation of elementary school aged child at a parish rectory. Priest 82 died in 1983.

Prosecution barred due to the death of priest.

83

Removed from ministry in 2006 after allegation of abuse received and found credible. Identity of victim, according to records, was to remain confidential at request of victim. Nature of misconduct not contained in church records. No record of date of conduct or referral to law enforcement.

Prosecution barred for lack of victim. Any abuse may have been committed outside of the statute of limitations.

84

Report of sexual abuse of minors received after Priest 84's death. Abuse occurred in the 1970s at the church at which priest was pastor. Priest 84 died in 2001.

Prosecution barred due to the death of priest.

85

Separate reports of sexual abuse of minors occurring in 1980s received in 1993 and 1995. Investigation resulting in Priest 85's suspension from 1995-1997 until re-admitted to ministry with restrictions in 1997. Priest 85 again removed from ministry in 2002 and died later in 2002.

Prosecution barred due to the death of priest.

86

Report of sexual abuse occurring in 1967 received. Priest 86 moved to another parish in 1968, placed on leave in 1969 and re-assigned to college setting in 1970. Priest 86 left ministry in 1973 and later married. Priest 86 was laicized in 1989 and died in 1997.

Prosecution barred due to the death of priest.

87

Priest 87 transferred into diocese in 1964. Report of abuse occurring in the 1960s was received after Priest 87 died in 1972.

Prosecution barred due to the death of priest.

88

Removed from ministry. Allegations of adult sexual misconduct and inappropriate conduct with minors received after the death of deacon.

Prosecution barred due to the death of deacon.

89

Report of sexually inappropriate electronic communication between Priest 89 and elementary school aged children. Victims reported conduct to law enforcement. Priest 89 suspended and readmitted to ministry subject to restrictions in 2012 until resigning from ministry later that year.

In 2013, Priest 89 was charged with and pleaded guilty to federal charges of possession of child pornography. He was sentenced to 37 months' imprisonment and laicized in 2016. Due to his conviction, Priest 89 is a registered sex offender.

Although reported to have engaged in sexual communications with minors, not listed as having a “substantiated allegation of sexual abuse of a minor” by archdiocese. It is the opinion of the AGO that any offense involving the possession, receipt or manufacture of child pornography should be considered an act of sexual abuse involving the child or children depicted.

Previously referred for criminal prosecution.

90

Priest 90 was arrested in 2009 for seeking to entice a 16-year-old to Missouri for the purpose of sexual abuse. Conduct was part of a law enforcement sting. Charged in federal court and ultimately pleaded guilty to enticement and child pornography charges. Sentenced to 80 months’ imprisonment in 2010 and laicized in 2016. Due to his conviction, Priest 90 is a registered sex offender.

Previously referred for criminal prosecution.

91

In 2002, Priest 91 was found by federal authorities to be in possession of child pornography. Priest 91 ultimately pleaded guilty to a lesser charge and was

sentenced to probation. Due to his conviction, Priest 91 is a registered sex offender.

Priest 91 was granted retirement status and permanently barred from public ministry. Records indicate information regarding criminal case would be sent to appropriate Vatican authorities but no record of laicization proceedings.

Previously referred for criminal prosecution.

92

A report of abuse was received from the victim in 1994 relating to conduct by Priest 92 against victim beginning while victim was 12 years of age and continuing for five years from the late 1950s into the early 1960s. Priest 92 was a good friend of victim's family. Instances of abuse occurred in the parish rectory and elsewhere. Priest 92 died in 1977.

Prosecution barred due to the death of the priest.

93

Listed as a priest against whom substantiated allegations of abuse were first received after death. Priest 93 died in 1975. File reveals letter from 1970 in which

a delegation of parishioners reported instances of molestation against Priest 93.

Moreover, the letter refers to a similar allegation from 1969. No indication of any response from Archdiocese at that time.

Priest was removed from parish and allowed retirement in 1971.

Report of abuse received after Priest 93's death was received in 2006, deemed credible by review board. Instance of abuse occurred while victim was an elementary school aged child in the 1960s.

Prosecution barred due to the death of the priest.

94

Report of sexual abuse of an elementary school aged child received in 2004. Priest 94 died in 1993. Victim did not want services of any kind from Archdiocese.

Prosecution barred due to the death of the priest.

95

Report of sexual abuse of an elementary school aged child received in 2002. Abuse occurred in 1950s in the church sacristy, rectory and during out-of-town

trips. Victim's family was close friends with Priest 95. Priest 95 was allowed to take victim on trips during which abuse occurred. Report credited by archdiocese.

Prosecution barred by the statute of limitations.

96

Report of sexual abuse of an elementary school aged child was received in 2006 relating to abuse occurring in 1982.

Report of sexual abuse of another elementary school aged child which continued into victim's high school years was received in 2002. Abuse occurred over several years. Victim's family were close friends with Priest 96. Priest 96 died in 1985.

Prosecution barred due to the death of the priest.

97

Report of sexual abuse of an elementary school aged child was received in 2002. Instance of abuse occurred in 1950s at victim's parish and involved forcible sodomy. Report credited by archdiocese. Priest 97 died in 1981.

Prosecution barred due to the death of the priest.

98

Report of sexual abuse of an elementary school aged child was received in 2002. Instance of abuse occurred in 1960s at parish rectory. Victim recalled abuse in 2002 through therapy. Victim shared story of a single act of abuse with family but family recalled another instance. Priest 98 died in 1998.

Prosecution barred due to the death of the priest.

99

Report of sexual abuse of an elementary school aged child received in 1995 relating to abuse which occurred in the 1950s. Priest 99 died in 1983.

Prosecution barred due to the death of the priest.

100

Report of sexual abuse of a high school aged seminarian during the 1970s was received in 1993. Priest 100 had since left the archdiocese, where he was visiting from another diocese. By 1993, it appears Priest 100 had been removed from ministry by a diocese in California. Additional complaints of abuse were received between 1993 and 2002. Records do not reflect any disciplinary action

taken against Priest 100 in Missouri or other dioceses in which he served. Priest 100 died in 2010.

Prosecution barred due to the death of the priest.

101

Priest entered St. Louis Archdiocese from his home diocese of Joliet, Illinois in 1992. Bishop of Joliet attested to the suitability of Priest 101 for ministry. Priest was subsequently accused of abuse in Illinois during 1980s and successfully prosecuted by Illinois authorities beginning in 2002 for that misconduct. Priest 101 was recalled from ministry in St. Louis in 2002 when Illinois allegations and prosecution were announced. It appeared by 2002, Priest 101 was serving in hospital ministry under a shortened version of his surname.

After Priest 101 served his sentence in Illinois, he was successfully prosecuted by Missouri authorities for instances of sexual abuse of minors between 1992 and 1994 while serving in St. Louis Archdiocese. Pleaded guilty and sentenced to 10 years' imprisonment.

Previously referred for criminal prosecution.

102

Priest 102 was visiting St. Louis archdiocese in the 1980s. In 1999 and again in 2002, report of abuse by Priest 102 was received relating to his time in St. Louis in early 1980s.

At the time of the arrival of Priest 102, there is no attestation of his fitness from his home diocese in New York. There is a letter of gratitude for the archdiocese allowing 102 to reside there and to find a hospital assignment for him.

Before coming to St. Louis, Priest 102 committed sexual abuse of elementary school aged child in Massachusetts for which he was successfully prosecuted and sentenced to life imprisonment. Counsel for victims of Priest 102 provided documents from diocese in New York suggesting Priest 102's misconduct was known before he was sent to St. Louis and allowed a parish assignment and priestly faculties.

Previously referred for criminal prosecution.

103

Priest 103 visited Missouri from his home diocese in Texas despite a 1968 letter to Missouri bishop from the diocesan official in Texas that Priest 103 had caused trouble in Dallas and could be a problem for Missouri diocese.

1970 correspondence between Texas bishop and Missouri bishop agreeing to extend faculties but did not recommend appointment as associate pastor. Missouri diocese refused Priest 103's request to be incardinated to Missouri diocese in 1979. Correspondence indicates dioceses did not know where Priest 103 was living or working by this time.

1989 report of sexual abuse of a high school aged child in Illinois earlier in 1980s. Correspondence indicates Priest 103 was still living in St. Louis and traveling outside Missouri. Despite 1989 report, Missouri diocese provided a New Mexico diocese a letter of attestation that 103 could be allowed to speak and minister there, stating Priest 103 "has always been an asset to the St. Louis community and the church here."

Two additional reports of sexual misconduct against adults during a retreat received in 1994. Misconduct occurred in 1980. Faculties in Missouri removed upon receipt of additional reports in 1994. It appears faculties were also suspended by Priest 103's home diocese in Texas near this time.

There is correspondence from 1997 between archdiocese and Priest 103 making sure Priest 103 is refraining from any public ministry. In 1999, all U.S. Bishops warned that Priest 103 appeared to be celebrating mass and organizing retreats in violation of church law.

A report of sexual abuse of a minor occurring in 1970s received in 2001. An additional lawsuit alleging sexual abuse of a minor by Priest 103 filed in 2003. A third report of sexual abuse of a minor received in 2004 detailing abuse from 1970s in Missouri. Priest 103 died in 2018.

Prosecution barred due to the death of the priest.

104

First report of abuse received in 1997 and related to conduct occurring in 1975. Investigation in late 1990s revealed a long history of abuse against minors beginning after Priest 104's ordination and continuing into the 1980s. Priest 104 returned to ministry and was not removed from ministry until shortly before his death in 2013.

Prosecution barred due to the death of the priest.

105

First report of abuse occurred in 1987 and resulted in transfer of parish. Records do not reflect the nature of abuse. Record reveals Deacon 105 had reports

of misconduct while employed for an organization not affiliated with the church many years before ordination.

Despite denial of 1987 report, Deacon 105 placed on administrative leave in 1994 and laicized in 2014.

Prosecution barred by the statute of limitations.

106

First report of inappropriate behavior with children was received in 1971. In 1975, a detailed report of inappropriate sexual advances toward high school aged children was received.

In 1976, Priest 106 moved outside of Missouri before being suspended from ministry in 1977 and later laicized. Priest 106 later worked at a St. Louis elementary school after laicization.

Priest 106 was accused in state court of exposing himself in a restroom to elementary school aged children and in federal court of possessing child pornography. Both convictions were ultimately reversed.

Previously referred for criminal prosecution.

107

Report of abuse received in 1995 relating to an elementary school aged child. Abuse occurred between 1975 and 1980 into victim's high school years. Priest 107 was removed from ministry in 2002.

Prosecution barred by statute of limitations.

108

First report of abuse received by another priest in 1976. Multiple victims identified over several years. One victim reported abuse to priest at victim's high school. Victim admonished not to have older friends. Multiple victims of severe abuse including elementary school aged child. Removed from ministry until 1993 when Priest 108 granted retirement.

Victim 11 related an instance of abuse by Priest 108 the 1970s. Priest 108 was serving as a spiritual director at a retreat house and Victim 11 was in his high school years. Abuse included serving Victim 11 alcohol and providing Victim 11 with gifts. Victim 11 initially reported the incident to the Archdiocese and to representatives of Priest 108's religious order who urged Victim 11 to "forgive and forget." Later in the 2000s, Victim 11 filed a lawsuit and received a settlement.

Priest 108 died in 2009.

Prosecution barred due to the death of the priest.

109

Report of abuse of a minor received in 1996. Abuse occurred in 1988. Priest 109 suspended from ministry in 2002.

Prosecution barred by statute of limitations.

110

Report regarding suspected abuse occurring in 1985 submitted to Archbishop in 1986. Priest 110 suspended temporarily from ministry. Priest 110 was not permanently removed from ministry until 1995 report of abuse with multiple minor victims. Priest 110 died in 2004.

Prosecution barred due to the death of the priest.

111

Reports of sexual abuse of minors received between 1986 and 1992. Priest 111 granted retirement status in 1992. Priest 111 died in 2003.

Prosecution barred due to the death of the priest.

112

Priest 112 resigned from his parish assignment in 2002. First record of reports being received by the archdiocese date to 2002. Priest 112 granted retirement status until death in 2006.

Victim 10's family members related that Victim 10 was close to Priest 112 while serving as an altar boy at his parish in the 1970s. In summer of 1975, Victim 10 asked to quit his role as an altar server at Priest 112's parish which request his parents denied. Shortly thereafter, Victim 10 committed suicide. Priest 112 did not speak to or counsel Victim 10's family after his death despite having a close relationship with Victim 10's family prior to his death. On his deathbed, Priest 112 requested to meet with Victim 10's family. Victim 10's family refused this request.

Priest 112 died in 2006.

Prosecution barred due to the death of the priest.

113

Report of abuse of high school aged child received in 1996 relating to conduct occurring in 1970. Priest 113 admitted abuse and was suspended from ministry in 2002.

Prosecution barred by the statute of limitations.

114

Report of abuse of four high school aged boys in a diocesan high school setting received in 1986. Abuse occurred between 1981 and 1986.

Priest 114 was suspended from teaching and from ministry upon receipt of report in 1986. In 1987, Priest 114 was convicted of deviate sexual assault for which he served five years in prison and five years on parole. Due to the nature of his conviction, Priest 114 is a registered sex offender. Laicized in 2006.

Victim 02 reported that her son was attending a diocesan high school in 1986 and returned home to inform her he would not return to school and he did not care where Victim 02 sent him, he was not returning to that school. Victim 02's son later admitted Priest 114 had sexually abused him. Victim 02's son settled a

civil claim against Priest 114 and Archdiocese. Victim 02's son suffered from psychological problems after abuse and committed suicide in 1990.

Previously referred for criminal prosecution.

115

Report of abuse received in 2014 and related to sexual abuse of a minor during the 1980s of a high school aged child. Priest 115 retired in 2011 and was suspended from ministry on receipt of report.

Prosecution barred by the statute of limitations.

116

Report of abuse first received in 1998. Abuse occurred in 1960s and through 1970s during victim's elementary and high school years. Priest 116 retired in 2000.

A second report of abuse was received in 2002.

Priest 116 was deemed not physically or mentally competent at the time reports of abuse were received and could not engage in church investigation.

Priest 116 died in 2007.

Prosecution barred due to the death of the priest.

117

Report of abuse received in 1994 and related to conduct with an elementary school aged child in 1974. Abuse continued for five years into victim's high school years.

Priest 117 was indicted by state authorities and convicted in 2005. Archdiocese spent extensively on Priest 117's criminal defense and guaranteed an appeal bond after conviction. Priest 117 was sentenced to prison but his appeal was ultimately successful and his conviction reversed due to the statute of limitations in 2006.

Between 2002 and 2014, five other victims contacted Archdiocese reporting abuse by Priest 117 when they were teenagers. Internal review of reports of sexual abuse not commenced until 2007. It is unclear when he was removed from ministry. Placed on administrative leave in 2002. Accountability plan put in place in 2011.

Previously referred for criminal prosecution.

118

Report of molestation of elementary school aged children received in 1963. No record of any action on report other than examination of Priest 118 during which he admitted to abuse of minors but no action on ministry appears to have been taken.

Ten victims identified between 1993 and 1999. Range of victims' ages included elementary school aged children and high school aged children. Accounts detailed a wide range of misconduct including forcible abuse. Priest 118 placed on administrative leave in 1994.

Laicization proceedings commenced in 2004 and concluded with Priest 118's laicization in 2006. Priest 118 died in 2014.

Prosecution barred due to the death of the priest.

119

Report of abuse of elementary school aged child received in 1990. Abuse was reported immediately to archbishop. A second instance of abuse occurred in 1990 before Priest 119 was removed from parish. Archdiocese did not receive

report of second instance of abuse until 1991. Archdiocese reported second incident to law enforcement.

In 1991, Priest was temporarily suspended from ministry. After receiving second report of abuse, Priest 119 returned to ministry. Later in 1991, Priest 119 was charged with sexual assault and pleaded guilty in 1992 and was sentenced to four years imprisonment.

Priest 1991 did not return to ministry after his arrest and was laicized in 2005. Because of the nature of his conviction, Priest 119 was a registered sex offender until his death in 2015.

Previously referred for criminal prosecution.

120

Report of abuse received in 1996. Abuse occurred in 1992 and involved a high school aged child. Report indicated victim was forcibly abused.

In 1997, Priest 120 was placed on temporary leave but allowed to relocate outside of the United States and serve as a missionary. Priest 120 publicly denied committing any abuse.

Referred for criminal prosecution.

121

In 2004, Archdiocese investigated suspected child pornography found on the computer of Priest 121. Again in 2007, suspected of accessing child pornography. Conduct reported to FBI. No criminal charges were filed. Priest resigned his pastorate in 2007 and was removed from public ministry and retired.

A 2008 report was received which related to sexual abuse of an elementary school aged child in the early 1980s.

Previously referred for criminal prosecution.

122

A report of sexual abuse of an elementary school aged child was received by the Archdiocese in 1993. Priest 122 was moved to retirement community in 1993 and appears to have been allowed to continue in ministry.

A second report of sexual abuse of an elementary school aged child was received in 1999. Report described abuse by Priest 122 against a child in the parish school to which he was assigned.

Victim 23 recounted an instance of abuse at the hands of Priest 122 in the 1950s while she attended the parish school to which Priest 122 was assigned.

Incident occurred in Priest 122's residence. A second incident occurred approximately one year later in a storage area of the school. Priest 122 left Victim 23's parish soon after the second incident. However, Victim 23 recounted that Priest 122 returned to the parish to attend her basketball games.

Victim 23 attempted to contact the archdiocese in the 1980s to report the abuse but her telephone calls were not returned.

Prosecution barred due to the death of the priest.

123

Report of abuse received in 2002 and related to abuse of an elementary school aged child in the 1970s. Priest 123 admitted accusation and resigned from ministry.

Prosecution barred by statute of limitations.

124

Priest 124 was reported to have engaged in sexual abuse of a sixteen-year-old child in 1959. Report received in November 1960 and Priest 124 voluntarily left the priesthood in 1961.

Prosecution barred by statute of limitations.

125

Three reports of sexual abuse of elementary school aged children were received after the death of Priest 125 in 1985.

Victim 04 reported he was sexually abused by Priest 125 while attending the parish school to which Priest 125 was assigned. Victim 04 attempted to respond to the call of the Archdiocese for victims to come forward in 2003. Victim 04 initially wrote an archdiocesan official and sought to report his abuse. Victim 04 corresponded with the auxiliary bishop and another archdiocesan official and sought to determine whether his report was deemed credible and whether any further investigation of his report was or would be undertaken. Victim 04 did not seek any compensation and has never attempted to sue the archdiocese.

Between 2003 and 2004, Victim 04 endeavored to learn whether his report was deemed credible and subjected himself to a lengthy interview with an archdiocesan official. At its conclusion, Victim 04 was told his report was credible and that there were no other reports of abuse at to Priest 125 in Priest 125's file.

Later independent investigation by Victim 04 established that the Archdiocese had received reports of abuse as early as 1980 regarding Priest 125.

In 2008, an archdiocesan official acknowledged that it had notice of Priest 125's abuse before Victim 04's 2003 report. Later, in 2008, Victim 04's correspondence to the bishop was forwarded to yet another archdiocesan official. This final archdiocesan official wrote to Victim 04 and suggested meeting in person to begin the process of reporting even though Victim 04 had begun the process in 2003.

In conclusion, Victim 04 reports that his interaction with the archdiocese between 2003 and 2008 included instances of misinformation, a complete breakdown in recordkeeping and a lack of continuity among numerous archdiocesan officials, none of whom appeared to know what the other was doing or what information the other was receiving.

Prosecution barred due to the death of the priest.

126

A report of abuse was received in 1991 relating to sexual abuse of an elementary school aged child. Abuse occurred in 1963. Priest 126 acknowledged abuse and additional instance of abuse from 1970s. Priest 126 was placed on leave in 1992 and returned to ministry at a convent the next year. Priest 126 also served in a diocesan liaison position until removed from active ministry in 2002. Priest 126 died in 2006.

Prosecution barred due to the death of the priest.

127

A report of sexual abuse of a high school aged child was received in 2002. Priest 127 indicted for statutory sodomy and removed from ministry. Priest 127 ultimately convicted of abuse and sentenced to three years' jail.

A second report of abuse involving a high school aged child was received in 2004 through a civil lawsuit filed against the Archdiocese.

Priest 127 was suspended from ministry upon his conviction in 2003 and laicized in 2006. Because of the nature of his convictions, Priest 127 is a registered sex offender.

Previously referred for criminal prosecution.

128

A report of abuse against three elementary school aged children was received in 1976. Instances of abuse were over a number of years leading up to and including 1976. Priest 128 switched ministry.

In 1977, Priest 128 was returned to ministry. In 1979, additional reports of abuse against elementary school aged children were received and Priest 128 again temporarily left the priestly ministry.

In 1980, Priest 128 returned to St. Louis and was assigned to hospital ministry until his retirement in 1993.

In 1997, additional reports of abuse were received. Priest 128 was then removed from public ministry. In 2002, Priest 128 gave a newspaper interview in which he acknowledged abusing several elementary school aged children.

Priest 128 died in 2014.

Prosecution barred due to the death of the priest.

129

A report of abuse was received in 2014 relating to sexual abuse of a minor in the 1970s. Report credited by Archdiocese at that time.

Priest 129 died in 2000.

Prosecution barred due to the death of the priest.

130

A report of sexual abuse of a high school aged child was received in 1993. Abuse occurred in 1973 while Priest 130 was still in the seminary. Priest 130 was temporarily absent from seminary studies and later deemed safe for ministry in 1994.

Priest 130 assigned to high school teaching. Priest 130 was found to be in violation of his safety plan in 1997 because he hosted children on an out of town trip as the only adult. Priest 130 was placed on leave due to the violation.

Between 2002 and 2004, many additional reports of sexual abuse of high school aged children were received by the archdiocese relating to conduct occurring between 1979 and 1995. It appears Priest 130 did not return to ministry after 1997. Priest 130 was laicized in 2004.

Referred for potential criminal prosecution.

131

First record of sexual misconduct dates to 1966. Another letter in the file from 1968 indicates additional concerns about sexual misconduct toward seminarians.

Report of sexual abuse of minors, the first a high school aged child and the second an elementary school aged child were received in 1993. Instances of abuse date to 1950s. Priest 131 died in 2004. No record of disciplinary action of any kind taken against Priest 131 or whether Priest 131 retired from ministry at any time before his death.

A third report of abuse was received in 2018 accompanied by a request that Priest 131's picture be removed from display at a church.

Prosecution barred due to the death of the priest.

132

Report of sexual abuse of a high school aged victim was received from victim's father in 1978. Report made directly to bishop. Priest 132 was moved to another parish. In 1989, Priest 132 resumed relationship with victim, who was now an adult. Victim diagnosed with severe psychological injuries as a result of abuse. Priest 132 resigned from ministry in 1993 and was ultimately laicized.

Prosecution barred by statute of limitations.

In 1993, a report of abuse of a high school aged child was received relating to abuse occurring in 1962. Victim 06 reported the abuse to the Archdiocese and Priest 133 was removed from his parish. According to Victim 06, the abuse occurred over years and involved more than twenty instances of abuse. Priest 133 served Victim 06 alcohol and employed Victim 06 at the diocesan high school at which Priest 133 served as an administrator. According to Victim 06, Priest 133 warned him to keep their conduct secret or Victim 06, who attended a diocesan high school seminary at the time, would not be able to become a priest. Victim 06 ultimately did not seek to become a priest.

In 1994, a second report of abuse against a child was received. The report related to conduct occurring in the 1950s when the victim was in his late elementary school and early high school years. The abuse involved Priest 133 serving the victim alcohol.

Priest 133 was the pastor of the parish at which Priest 142 served in the 1970s.

Priest 133 was granted retirement in 1993. Priest 133 died in 2000.

Prosecution barred due to the death of the priest.

134

First report of abuse received in 1995. Report detailed abuse of high school aged child and included providing victim with alcohol and displaying pornographic materials. Priest 134 acknowledged conduct in 1995 and was allowed to return to ministry.

A second report of abuse of a high school aged victim was received in 2000 and related to conduct in 1971.

A third report of attempted abuse against a high school aged child was received in 2002 and related to conduct occurring in 1978. Priest 134 was suspended from public ministry in 2002. Priest 134 died in 2012.

Prosecution barred due to the death of the priest.

135

A report was received involving attempted sexual abuse of a high school aged child. The abuse occurred in 1963. Victim spent the night in the parish rectory with Priest 135. Upon receipt of report, Priest 135 temporarily suspended and later reassigned to parish ministry.

Victim 18 recounted an instance of abuse occurring in the 1990s. Abuse occurred at the church to which Priest 135 had recently been assigned. Victim 18 was sixteen years of age at the time of the abuse. In 2000, Victim 18 reported that Priest 135 was removed from ministry and sent to a residential facility within the archdiocese.

On reporting the incident to the Archdiocese in 2018, Victim 18 was invited to meet with archdiocesan officials but preferred not to meet at a church facility as proposed.

In 2001, Priest 135 admitted to extensive sexual abuse over the course of his priesthood and was removed from ministry in 2002. Priest 135 died in 2015.

Prosecution barred due to the death of the priest.

136

In 1960 four high school seminarians from Priest 136's parish, during a school retreat, informed one of the priests hearing confessions that Priest 136 had sexually abused them on multiple occasions.

The rector of the seminary informed the Archdiocese and it appears that Priest 136 acknowledged the sexual abuse and stated that he was working with his

confessor to help him with this problem. There is no record of any other action taken in this case except to move Priest 136 from the parish the following year.

Victim 05 reported that he was sexually abused by Priest 136 while in elementary school between 1957 and 1959. Victim 05 stated that the abuse occurred in the parish rectory on approximately twelve occasions. Victim 05 stated that Priest 136 often invited groups of children to the rectory for socialization and then would call one of the group out. Victim 05 stated that, while attending a diocesan seminary high school, he was asked about Priest 136 by school leadership.

Victim 05 related that he reported his abuse to the Archdiocese in the early 2000s and appeared before the IRB. Victim 05 was informed that his report was not credited because it was Victim 05's word against Priest 136. Priest 136 listed as credibly abused by Archdiocese in 2019.

Priest 136 retired in 1993 and died in 2012.

Prosecution barred due to the death of the priest.

Numerous reports of sexual abuse and misconduct against children and adults received during from the 1970s through the 1990s.

The first reported misconduct related to abuse of two minors during an out of town trip in 1969.

In 1972, Priest 137 was arrested for lewd and lascivious behavior. Again in 1978, Priest 137 was arrested for a sex offense in Crestwood, Missouri involving an undercover sting.

A second report of misconduct against minors detailed an assault from 1974 occurring at Priest 137's rural Missouri home.

In 1986 assaulted an elementary school aged child during confession at his parish. Charged with assault of the victim, pleaded guilty and granted probation in 1988. In 1989, completed court ordered treatment and returned to public ministry.

In 1991, Priest 137 was appointed to a new parish. In 1998, Priest 137 was arrested for lewd conduct in the City of St. Louis. In 2002, Priest 137 was removed from ministry based on his 1988 conviction. Archdiocese explained removal was due to a review of his 1988 conduct based on more rigorous standards imposed by 2002 Charter. Priest 137 was laicized later in 2002.

Victim 04 was a parishioner at Priest 137's parish during the 1990s and reported that no one in the parish was notified of Priest 137's prior record of abuse when he arrived at the parish.

Previously referred for criminal prosecution.

138

Report received in 1955 relating to sexual abuse of a high school aged child. Priest 138 resigned from ministry in 1965. According to Archdiocesan list of credibly accused priest, Priest 138 was laicized at some point. A second report of abuse of a high school aged child was received in 1995 and relating to conduct occurring in 1952 and 1953. Priest 138 died in 2008.

Prosecution barred due to the death of the priest.

139

In 1994, Priest 139 informed the Archdiocese of a ten year relationship with a victim beginning when victim was 14 years of age. Priest 139 also disclosed a single incident of abuse involving another high school aged victim. Priest 139

returned to ministry after a temporary suspension in 1995. Removed from ministry in 1997 and laicized in 2006.

Prosecution barred by statute of limitations.

140

First report of abuse was received in 1978 and Priest 140 admitted to abuse. Priest 140 placed on a leave of absence and returned to ministry in 1979. New reports were received in 1987 and Priest 140 was again suspended from ministry only to return in 1990. In 1991, Priest 140 was permanently removed from ministry and laicized in 2004.

In all, reports of abuse against 21 victims have been received. Victims were of elementary school age and high school aged and instances of abuse spanned 1974 to 1985.

Prosecution barred by statute of limitations.

141

In 2002, a report of sexual abuse of an elementary school aged child was received relating to conduct occurring in 1970. Priest 141 had left the priesthood and was laicized in 1972.

Prosecution barred by statute of limitations.

142

A report of abuse against an elementary school aged child was received in 1984.

Victim 27 stated he was abused during elementary school by Priest 142 over many years. Abuse occurred in rectory of parish. Victim 27 stated he informed the Archdiocese in 2002 and spoke to an official known to Victim 27 who had served at the same parish.

According to Victim 27, Archdiocesan official vouched for Priest 142 and stated Priest 142 would not have hurt Victim 27. Also in 2002, Archdiocesan official stated in news reports that previous reports of abuse against Priest 142 had been received but were not substantiated and Archdiocese had no plans to remove him. In 1998, according to news reports, Priest 142 was removed from ministry and sent for treatment and counseling after civil suit against him was resolved. In 1999, Priest 142 was returned to parish ministry and members of his parish were informed of the reports of abuse.

Victim 27 stated that he reiterated his allegation of abuse to another Archdiocesan official later in 2002 and was told the Archdiocese had no record of

Victim 27's earlier contact with Archdiocese. In 2011, Victim 27 appeared before the IRB and was told Archdiocese had no record of any contact between him and Archdiocese from 2002. Victim 27 settled a civil claim against Priest 142 with Archdiocese in 2017. Victim 27 reported extensive psychological trauma as a result of his abuse.

Priest 142 resigned from ministry in 2002. Archdiocese has described Priest 142 as living in a secure environment. In 2013, Archdiocese publicly announced credible reports of abuse from 1970s against Priest 142.

Prosecution barred by statute of limitations.

143

A report of abuse of a high school aged child was received in 1986 and related to abuse occurring between 1982 and 1985. Priest 143 was suspended and did not return to public ministry.

Prosecution barred by statute of limitations.

144

A report of sexual abuse of an elementary school aged child was received in 2002 and related to abuse occurring between 1997 and 2002. Priest 144 was removed from ministry and convicted of statutory sodomy and child molestation. Priest 144 was sentenced to 15 years imprisonment. Because of the nature of his conviction, Priest 144 is a registered sex offender. Archdiocese sought laicization of Priest 144 and, by the time of his release from prison in 2015, Priest 144 had been laicized.

Previously referred for criminal prosecution.

145

A report of sexual abuse of an elementary school aged child was received in 1989 and related to conduct occurring in the 1970s. Priest 145 admitted abuse to Archdiocese and was removed from parish ministry and assigned to serve as a hospital chaplain in 1990. In 1995, a second report of sexual abuse of two more victims, one elementary school aged and one high school aged, was received in 1995. That same year, Priest 145 left church ministry and was laicized in 2005.

Additional reports of abuse of numerous elementary school aged victims were received in 2003. Reports were of abuse of elementary and high school aged children during the 1970s and 1980s.

Prosecution barred by statute of limitations.

146

A report of sexual abuse was received in 1987 and found to be not credible by the Archdiocese. A second report of sexual abuse was received in 2002 and again found not to be credible.

In 2010, Priest 146 was suspended from ministry for reasons other than sexual misconduct of any kind.

In 2015, a third report of sexual abuse was received and credited. Report detailed abuse of a high school aged child in the 1970s.

Prosecution barred by statute of limitations.

147

Victim 03 reported an instances of abuse by Priest 147, a religious order priest, against her during her high school years in St. Louis and in San Antonio,

Texas, when she visited the college at which Priest 147 was working during the late 1970s and 1980. In 2007, religious order deemed Victim 03's report to be credible and suspended Priest 147, then serving in Texas, from ministry. Priest 147 was listed as credibly accused on the San Antonio diocesan list in 2019.

Victim 03 reported that the St. Louis Archdiocese explained it could not assist her with her allegation because Priest 147 was not a diocesan priest.

Prosecution barred by statute of limitations.

148

Victim 12 reported she met Priest 148 while a student at the parish to which Priest 148 was assigned. Victim 12 reported being groomed by Priest 148 through employment, gifts, praise and physical affection which turned into sexual abuse. In 1976, while Victim 12 was sixteen years of age, Victim 12 became pregnant by Priest 148 who left the priesthood and married Victim 12. The couple remained married for sixteen years until divorcing in 1992.

Prosecution barred by statute of limitations.

149

Victim 15 reported suffering abuse at the hands of Priest 149 during her elementary school years during the 1950s while attending the parish school to which Priest 149 was assigned.

Prosecution barred by statute of limitations.

150

Victim 20 recounted suffering abuse at the hands of Religious Sister 150 in the 1960s while attending the parish school at which Religious Sister 150 taught. Victim 20 reported the abuse to another teacher who admonished Victim 20 for scandalizing Religious Sister 150. Religious Sister left her order and died in 2008.

Prosecution barred by the death of the religious sister.

151

Reports of sexual abuse of elementary and high school aged children received by 1999 and through 2001. Multiple reports of abuse occurring in 1970s and 1980s. Priest 151 suspended and removed from ministry in 1999. Law enforcement investigated incident of abuse from 1980s involving an elementary school aged child.

Previously referred for criminal prosecution.

152

Reports of sexual abuse of a high school aged child received in 2000. Abuse occurred in early 1980s. Priest 152 was suspended from ministry upon receipt of report of abuse and ultimately removed from priestly ministry.

Prosecution barred by the statute of limitations.

153

Numerous reports of sexual abuse of during the 1960s received after the retirement of Priest 153 in 2001. Upon receipt of reports, Priest 153 removed from ministry. Priest 153 died in 2010.

Prosecution barred due to the death of the priest.

154

Reports of abuse received in 1994 relating to numerous acts of abuse against elementary school aged children during the 1960s. Priest 154 was removed from ministry upon receipt of reports.

Prosecution barred by the statute of limitations.

155

Report of sexual abuse of a high school aged child was received in 2018. Incident of abuse occurred in 1978. Priest 155 died in 1985.

Prosecution barred due to the death of the priest.

156

Report of sexual misconduct with respect to a high school aged child received in 2006. Report related to conduct occurring in the 1980s and was credited by the diocese. Priest 156 removed from ministry and ultimately resigned.

Prosecution barred by the statute of limitations.

157

A report of sexual abuse of an elementary school aged child was received in 2006. Report related to conduct occurring in the 1950s. Priest 157 died in 1990.

Prosecution due to the death of priest.

158

Reports of grooming activity and sexual misconduct with respect to elementary school aged children were received in 2002. Priest 158 was suspended and ultimately agreed to resign the priestly ministry. A lengthy laicization process was undertaken and it is unclear if or how such process was resolved.

Prosecution barred by the statute of limitations.

159

Report of sexual abuse received after death of Priest 159 in 2012. Report related to abuse occurring during the 1970s.

Prosecution barred due to the death of the priest.

160

Report of sexual abuse received after death of Priest 160 in 1998. Report related to abuse occurring during the 1960s.

Prosecution barred due to the death of the priest.

161

Reports of sexual abuse of numerous minors received in 2011 and credited. Abuse dated to the 1940s. Priest 161 died in 1963.

Prosecution barred due to the death of the priest.

162

Report of sexual abuse by Deacon 162 received in 1993 relating to conduct against a high school aged child committed earlier that year. Deacon 162 was suspended upon receipt of the report and eventually removed permanently from ministry and the clerical state.

Prosecution barred by the statute of limitations.

163

Report of abuse was received in 1995 and related to sexual abuse of a child during the 1980s. Priest 163 was investigated and removed from priestly ministry at that time.

Priest 163 died in 2013.

Prosecution barred due to the death of the priest.



V. CONCLUSION

1. The Clergy Abuse Crisis Persists in Missouri

The abuse of victims at the hands of clergy is evident, though we may never know how extensive. Even the dioceses recognize that many victims have never come forward. Indeed, during this investigation the AGO met with and received information from many victims who had never before reported their abuse to anyone. Some are discussed in this report and some wanted only to provide information for its composition. Victims reacted to their abuse and processed it in many different ways. The Church and civil authorities must fight fatigue and cynicism. For its part, the AGO will continue to work with victims and will continue to refer victims to the church's Independent Review Board (IRB) and assist them in locating services and communicating with civil authorities when needed.

2. The 2002 Charter is a Work in Progress and More Work is Needed

Only a small percentage of the abusive priests described in this report are reported to have committed misconduct after 2002. It is true that the training and review processes established by the 2002 Charter are robust. Occasionally, however, the dioceses have failed to follow their own procedures. Unless prompted by a victim, the dioceses have not applied the heightened standards of conduct set forth in the 2002 Charter to reports of abuse received before 2002.

The American Catholic Church's own auditors and review board have repeatedly noted significant non-compliance with the protocols of the 2002 Charter though they, ultimately, have no authority to mandate compliance from the bishops.

3. The American Catholic Church Should Implement its Own Suggestions for Reform

In its June 2019 progress report, the National Review Board of the United States Conference of Catholic Bishops called for (1) a revision to strengthen the 2002 Charter in light of the new 2019 Vatican pronouncements on clergy abuse; (2) more frequent meetings to review and amend the 2002 Charter; (3) more robust, independent audits of diocesan compliance with the charter; (4) an independent body, rather than a committee of bishops, charged with overseeing the conduct of bishops; and (5) parish-level audits of compliance. These recommendations all move the dioceses to more rigorous, independent oversight of its priests and bishops.

4. The Lack of Diocesan Oversight of Religious Order Priests is a Major Concern that Should be Immediately Addressed

Religious order priests are a significant cohort in all Missouri dioceses and

effectively escape diocesan oversight. Insufficient vetting accompanies a religious order priest's admission to ministry in Missouri dioceses. Insufficient training and oversight as to youth safety occurs during a religious order priest's career. Insufficient recordkeeping accompanies religious order priests' files in Missouri dioceses. Finally, insufficient authority is exercised by Missouri dioceses over religious order priests accused of misconduct.

Religious order priests serve in Missouri parishes, schools, and hospitals. They have all the authority and faculties of diocesan priests. They interact with parishioners just as frequently as diocesan priests. That Missouri dioceses exercise so little supervision over these priests is inexplicable.

5. Independent Review Boards Need to be More Independent and Active

Independent Review Boards (IRBs) are a central part of Missouri dioceses' response to the clergy abuse crisis and represent a positive step in the church's response to victims. They should be made more independent of bishops and diocesan administration.

First, numerous victims have expressed hesitance to meet on diocesan grounds at diocesan facilities to recount their abuse. Second, IRBs should be composed of lay investigative, medical, and scientific experts. Third, IRBs should review reports received before the existence of IRBs and apply the heightened

scrutiny of the 2002 Charter. Reports of abuse after 2002 were more likely to be reviewed and deemed credible by IRBs than before 2002, when sometimes only a single diocesan official reviewed abuse reports. IRBs also appear not to have relied on a “priest’s word against victim’s word” when declining to deem a victim’s allegations credible.

6. The Process of Transferring of Priests Between Dioceses Deserves Great Scrutiny

When a priest ordained and incardinated into one diocese visits another, the receiving diocese relies only upon a letter of good standing from the sending bishop. The files the AGO reviewed revealed no explanation of why transferring priests were being transferred. Further investigation of files has revealed the transferring priests sometimes had a negative history in their home diocese. Some of that negative history was not disclosed to the receiving dioceses. Worse yet, some transferring priests were accepted into a Missouri diocese despite the receiving diocese actually knowing of their negative histories.

Transferred or “external” priests do not appear to represent a significant percentage of priests in Missouri as there are far more religious order priests. However, the supervision and discipline gap is just as significant and has been exploited in the past, thereby endangering children. As with religious order priests,

visiting and “external” priests residing in Missouri should be trained, supervised, and disciplined just as diocesan priests are.

7. Diocesan Responsibility for Supervision and Discipline Should not End with the Laicization or Retirement of an Offending Priest

The Discipline process for a priest credibly accused of abuse can end within the church in numerous ways including his restriction, removal from public ministry, assignment to prayer and penance, retirement, or laicization.

Missouri dioceses should recognize that responsibility over a restricted, retired, or even laicized priest who has been credibly accused of abuse cannot stop with the completion of the diocesan or Vatican disciplinary process. These priests continue to live in our communities. As such, the dioceses must notify communities of the priests’ presence and restrictions on ministry and supervise disciplined priests to ensure their compliance with restrictions.

In only a handful of files did the AGO observe diocesan personnel affirmatively checking on disciplined priests’ compliance with their restrictions on ministry, and even in those cases one priest was checking on another priest. No regular reports appear to be required of the priests themselves even though they often enjoy retirement benefits from the diocese.

The AGO also encountered examples of laicized priests and priests who abandoned their ministry, whose whereabouts were unknown to the diocese. In such cases, the diocese should take affirmative steps to locate these priests and, when appropriate, return them to the dioceses to face discipline.

8. Supervision of Recovery and Treatment Facilities

Missouri is home to residential facilities hosting disciplined priests, former priests accused of abuse, and priests and former priests from outside of Missouri whose status is unknown. Whether these facilities are affiliated with the Catholic Church or not, the diocese should endeavor to assess which priests and former priests are residing in these facilities and whether their respective levels of independence are appropriate. Just as with cases of religious order priests and visiting priests, the dioceses should not rely on jurisdictional formalities. They are on notice regarding these facilities, some affiliated with the Catholic Church, within their territories. They should endeavor in cooperation with these facilities first to know which priests and former priests are here and then to ensure appropriate safety plans are in place for them.

9. The AGO has Identified Cases for Criminal Referrals

The AGO has reviewed more than two thousand files of priests and deacons serving in Missouri over the last seventy-five years. That review and contacts with

victims generated the one hundred sixty three (163) priests and deacons whose sexual misconduct is discussed above. Because of the gaps with respect to historical recordkeeping, as well as distinctions between religious order priests and visiting priests, the AGO does not represent that this is a comprehensive account of all offending priests.

Of these one hundred sixty three (163) priests and deacons, eighty-three are deceased. Prosecution of forty-six is clearly barred by the statute of limitations applicable to the reported offense. Twenty-one priests' cases have been previously referred to law enforcement for criminal investigation—fifteen of those referrals have been filed in court and six of those referrals are still under investigation or have been declined for prosecution. One priest's case is still under diocesan review. The remaining twelve priests' cases will be referred to the appropriate prosecutors' offices for consideration of criminal investigation and prosecution.

The AGO has observed that historical criminal referrals have been made to local police departments. Future referrals should include the appropriate prosecutor's office as well. These referrals involve specialized areas of law and often require application of complex, overlapping statutes of limitations. Including prosecutors' offices in the referral process will help law enforcement agencies receiving them to assess the referrals and ensure viable referrals are not missed.

10. The AGO is Committed to Ongoing Support for Victims

This investigation began for victims and ends with our commitment to continue supporting victims. Given the extent of the clergy abuse crisis and the diverse ways in which victims have experienced abuse and sought help, the AGO commits to remain a resource for victims. If other victims come forward to seek evaluation of their reports for criminal referral, presentation to the diocesan IRB, or access to therapeutic services, the AGO will use the knowledge it has gained over the course of this investigation to assist them. The internet portal and hotline for victims will remain active and an AGO point of contact will handle reports as they are received.

INDIVIDUAL VICTIM STATEMENTS

April 1, 2008



Mr. Chairmen and members of the Committee,

In late October of 1986, our family's lives were shattered. My youngest son, Stephen, came home from school and refused to go back under any circumstances. He had just started his junior year at Bishop Dubourg High School in St. Louis, Mo. Late that evening he confessed to me that he was being sexually abused by a priest/teacher at the school. We went to the hospital the next morning and the Child Abuse Hot Line was called by the hospital administrator. Both the City and the County police were involved since the school was in the city and the Parish rectory, where Stephen was abused, was in the county. 3 days later the priest, Fr. James Funke, and another teacher at the school, Jerome Robben, were arrested.

The police told us, that in searching both of their living quarters; they found video tapes and photo albums that lead them to believe over 100 boys had been involved with these two men. They gave the boys alcohol, money and threatened them with bad grades and even their lives. They both pled guilty to the charges against them, but refused to give the police any of the names of the boys. Ultimately, there were two other boys along with my son who testified against the two men. Sentencing did not take place until late 1987.

In sentencing Fr. Funke, Judge William M. Corrigan, angrily rejected a plea for leniency and said he would have given Funke 50 years in prison – the maximum-had the prosecutors asked for it. The prosecutors recommended a 10 year sentence. Judge Corrigan stated "You don't deserve and can't have probation. If these young men were women, we'd say you were a rapist. If you had sold them cocaine, we would say you had fried their brains. But what you have done is far more insidious... You have assaulted them, you have raped them, you have fried their brains. You are sick, there isn't any question about that. But you have perpetrated crimes of violence against young people, and I don't care how sick you are – you need to go to the penitentiary. Fr. James Funke received 10 years in prison and Jerome Robben received 6 yrs. in prison from the City of St. Louis and additional 2 yrs from St. Louis County.

Stephen received extensive counseling after he reported his abuse and appeared to be doing OK. As with most victims, depression is a constant companion and on January 25, 1991, Stephen committed suicide. He was under a doctor's care at the time.

I tell you all of this, so you will understand the types of individuals that were removed from the State of Missouri's Registered Sex Offenders list in June of 2006. Both of these men have been out of prison for over 10 years. James Funke lives in Dittmer, Mo. within walking distance of a grade school and pre-school and Jerome Robben lives in Lemay, a highly residential community within St. Louis County and is within a couple blocks of a high school. Unfortunately, none of the residents will be able to find their names on the Registered Sex Offenders website and know what danger is living in their neighborhood.

When you take control out of the hands of the proper authorities to oversee where predators are living, you put it in the hands of the victims, their families and friends to do what they can to bring awareness to the people. You do not want us to police these individuals. We have been through enough, lost enough and should not have to make this a life long endeavor.

There is no cure for the problems that sex offenders have and they become more dangerous as years go on when given the time to perfect their efforts.

**If you must error, PLEASE ERROR ON THE SIDE OF THE VICTIMS,
ESPECIALLY THE CHILDREN!!!**

Hoping and praying with all my heart that you will pass **SJR 34 & 30** and put these two men along with thousands of other predators back on the Missouri Sex Offenders Registry. Give the people of Missouri a chance to protect themselves and their children against these individuals.

Sincerely,

Mary Ellen Kruger

A black rectangular redaction box covering the signature area.



Mary Ellen Smith
13526 Suson Forest Ct.
St. Louis, MO 63128
314-270-3299

August 8, 2019

I served as Principal of Immaculate Conception School in New Madrid, Missouri from 1982-1986. At that time, I was a member of the Sisters of the St. Joseph of Carondelet. For three of those four years, Father Larry Gregovich was the pastor.

During that time, I suspected Fr. Gregovich of being a pedophile. There were many instances that caused me to arrive at that conclusion. I considered it my responsibility to report what was going on. I first spoke with Fr. Gregovich and told him of my suspicions. His behavior did not alter in any way. Then I spoke with my religious superior, Sr. Ruth Stuckel, csj, who was sympathetic but did nothing to follow through. Next I spoke to the Priest Dean of the Region, Fr. Jim Reynolds. To my knowledge he did nothing. In addition, I contacted the priest Superintendent of Schools, Fr. Edward Eftink, each time Fr. Gregovich kept students out of school following a night where the boys spent the night at the rectory. His advice was for me to call the parents and report the students absent, which I did. After finding these persons unable to help me, I made an appointment with Bishop John Leibrecht in the Spring of 1985.

During that conversation, I recounted to Bishop Leibrecht specific instances of behavior by Fr. Gregovich regarding the young boys of the parish/school which had contributed to my conclusion that he was a pedophile. Although he listened to me, he made no promise of any action. During that summer, Fr. Gregovich was transferred to Carthage, MO----a parish with an elementary school. After the next school year, I moved to St. Louis.

Recently, by searching the internet and the Diocesan website, I have found that my suspicions that Fr. Larry Gregovich was a pedophile were confirmed. Most disturbing of the information I found was that although I reported to Bishop Leibrecht in the Spring of 1985, Fr. Gregovich was not removed from ministry until 1992. This is the basis for my accusation that Bishop Leibrecht committed a cover-up.

September 9, 2019 Statement of Bishop Emeritus John Leibrecht

I do remember meeting in 1985 with Sr. Mary Ellen Smith, who was a St. Joseph Carondelet nun and was principal at New Madrid Parish School. As I recall Sr. Mary Ellen expressed concerns that Fr. Larry Gregovich was taking boys out of class and spending time with him at the rectory. Sister spoke of concerns and suspicions, but did not allege inappropriate sexual contact whatsoever. She had talked to the boys and the parents about her concerns.

It is not accurate that I took no action with Fr. Gregovich after Sr. Mary Ellen's meeting with me. I visited Fr. Gregovich at the rectory to discuss Sister's concerns, and when I told him about what had been said, he strongly denied that he had done anything wrong with any children. I told him that he could not invite children to the rectory and that he could be with children only when others were around, and never be alone with them. I informed him that if he could not abide by these instructions, he would be taken out of priestly ministry.

I moved Fr. Gregovich to Carthage shortly thereafter, because on April 16, 1985, he sent a written request that he be moved to a parish closer to his mother in Kansas City due to her failing health.

Even though Sister Mary Ellen had shared her concerns with parents in New Madrid, we received no sexual misconduct complaints about Fr. Gregovich until

April 3, 1992. The Diocese immediately began an investigation, and I placed Fr. Gregovich on an indefinite leave of absence on April 21, 1992, with his priestly faculties being removed later that same year.

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April 3, 1992. The Diocese immediately began an investigation, and I placed Fr. Gregovich on an indefinite leave of absence on April 21, 1992, with his priestly faculties being removed later that same year.

Missouri Attorney General's Office,

[REDACTED]

[REDACTED]

Thank you for meeting with me a few weeks ago regarding my experience of sexual abuse by Albert Rehme, a priest at Holy Ghost church in Berkeley, MO. As I related to you in that interview, I appeared some years ago before a sham Archdiocesan committee to tell my story, details of which you have from our interview. As expected, their conclusion was to believe Rehme's denial and classify my story as not credible.

This past week, the Saint Louis Review published a list of clergy that have been substantiated as sexually abusing minors. Rehme is on that list. In the letter from Archbishop Carlson that accompanied the list, he stated that "publishing the list was the right thing to do" I beg to differ, the right thing to do would have been to notify me personally that my story was in fact credible and had been substantiated. How convenient, Rehme is dead, the criminal statute of limitations is long expired, the church leadership from that era are gone and only because they are being forced by you guys to own up to it are they willing to admit it now. They got away with it for so long, stonewalling, obfuscating, and lying and as usual their victims have no recourse, no satisfaction.

The "right" thing to do would be to provide a time period where those of us who were abused many decades ago and denied justice would have the opportunity to file civil suits against our abusers even if they are now dead. My Mom and Dad suffered as much as I did and they both died without the opportunity to heal. The church hierarchy wants to now claim accountability and transparency but they get to define the how and to whom they are accountable and transparent.

If opening their files and being forced to admit their wrongdoing is all that is going to happen, they are getting off easy. Our only satisfaction is that they can no longer call us liars, no longer claim that our stories are not credible. The statute of limitations has not expired for the One who is completely righteous and He will judge them in the end for the blood of the suicide victims they have on their hands and the mess they made of so many people's lives.

Thank you to you and [REDACTED] for listening and for the work you are doing to cause a fundamental reformation of the Catholic church, nobody else has.

Ron Youngclaus

Legal Appendix

Part A – Free Exercise

Gibson v. Brewer, 952 S.W.2d 239 (Mo. banc 1997)

Gray v. Ward, 950 S.W.2d 232 (Mo. banc 1997)

State and federal constitutions preclude claims of negligent hiring and supervision by a person harmed by the acts of a priest. Such claims would excessively entangle the civil authority into church affairs and thereby inhibit the free exercise of religion.

Doe v. Roman Catholic Archdiocese of St. Louis, 311 S.W.2d 818 (Mo. Ct. App. E.D. 2010)

Nicholson v. Roman Catholic Archdiocese of St. Louis, 311 S.W.2d 825 (Mo. Ct. App. E.D. 2011)

The Missouri Supreme Court denied transfer of these cases from the Court of Appeals and thereby declined to reconsider Gibson.

Doe AP v. Roman Catholic Archdiocese of St. Louis, 347 S.W.3d 588 (Mo. Ct. App. E.D. 2011)

D.T. v. Catholic Diocese of Kansas City-St. Joseph, 419 S.W.3d 143 (Mo. Ct. App. W.D. 2013)

Intermediate Courts of Appeals recognizing the difficult standard for pleading intention failure to supervise against a diocese for misconduct by one of its priests. Transfer denied by the Missouri Supreme Court in each case.

952 S.W.2d 239
Supreme Court of Missouri,
En Banc.

Michael GIBSON, Narron Gibson and
Marianne Gibson, Appellants–Respondents,

v.

Father Michael BREWER, Respondent–Appellant,
and

Catholic Chancery—Diocese of
Kansas City—St. Joseph, Respondent.

No. 79291.

|
Aug. 19, 1997.

Synopsis

Boy and his parents sued diocese and its priest for claims arising from the priest's alleged sexual misconduct. Defendants filed motions to dismiss. The Circuit Court, Jackson County, Gene R. Martin, J., dismissed all counts against diocese and some counts against priest. Plaintiffs appealed, priest cross-appealed, and the case was transferred. The Supreme Court, Benton, C.J., held that: (1) order dismissing some claims against priest was not a final and appealable "judicial unit"; (2) order dismissing all claims against diocese was a final and appealable "judicial unit"; (3) plaintiffs failed to state claim for breach of fiduciary duty against diocese; (4) plaintiffs failed to state claim of civil conspiracy against diocese and priest; (5) plaintiffs failed to state claim of diocese's respondeat superior or agency liability; (6) First Amendment's religion clauses would be violated by a adjudication of claim of negligent hiring, ordination, and retention of priest, claim of negligent failure to supervise priest, claim of negligent infliction of emotional distress, and claim of independent negligence of diocese; (7) First Amendment would not be violated by adjudication of claim of intentional failure to supervise priest; (8) plaintiffs stated a claim of intentional failure to supervise priest; and (9) plaintiffs failed to state a claim for intentional infliction of emotional distress.

Affirmed in part, reversed in part, appeals dismissed, and remanded.

See also, 950 S.W.2d 232.

Procedural Posture(s): On Appeal; Motion to Dismiss.

Attorneys and Law Firms

*243 Sylvester James, Jr., Nancy E. Kinner, Brian C. Fries,
Kansas City, for Appellants–Respondents.

James R. Wyrsh, Michael P. Joyce, Kansas City, for
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Carl H. Esbeck, Columbia, for amicus curiae.

Timothy Belz, St. Louis, for amicus curiae, Center for Law &
Religious Freedom of the Christian Legal Society, etc.

Opinion

BENTON, Chief Justice.

Michael Gibson and his parents Narron and Marianne Gibson appeal judgments of the circuit court dismissing several counts of their petition against Father Michael Brewer and all counts against The Catholic Diocese of Kansas City—St. Joseph. Brewer purports to cross-appeal the trial court's failure to dismiss the remaining counts.

The circuit court determined that there was no just reason to delay the appeals. *Rule 74.01(b)*. After opinion by the Court of Appeals, Western District, this Court granted transfer and now affirms in part, reverses in part, dismisses all appeals by or against Brewer, and remands.

I.

This case was decided on motions to dismiss, prior to answer and discovery. Therefore, the facts are assumed as averred in the petitions. See *Johnson v. Kraft General Foods*, 885 S.W.2d 334, 335 (Mo. banc 1994).

Father Brewer, a Catholic priest and an associate pastor, invited Michael Gibson and a friend to spend the night and watch movies in the church Rectory. Michael alleges that early in the morning, Brewer touched or fondled him in a sexual, offensive, and unwelcome manner.

Michael's parents, upon discovering the incident, reported it to the Diocese. Officials of the Diocese told them that "this happens to young men all the time" and that Michael "would get over it." Diocese employees urged them to meet

with Brewer to resolve the situation. After hearing of similar incidents between Brewer and other young boys, the Gibsons “expressed their concerns to the Diocese.” They were told that the incident with Michael was “an innocent pat on the butt” and that they should “forgive and forget” and get on with their lives. According to the Gibsons, the Diocese continued to ignore them until Brewer was eventually removed from the Diocese.

The Gibsons filed a petition for damages against both Brewer and the Diocese, alleging nine counts: battery, negligent hiring/ordination/retention, negligent failure to supervise, *244 negligent infliction of emotional distress, intentional infliction of emotional distress, breach of fiduciary duty, conspiracy, agency liability, and independent negligence of the Diocese. The trial court issued two judgments. One dismissed all counts against the Diocese for “failure to state a claim upon which relief can be granted and because such claims as alleged against said defendant infringe upon its rights provided by the First Amendment to the United States Constitution.” The other judgment dismissed all counts against Brewer except battery, negligent infliction of emotional distress, and intentional infliction of emotional distress.

II. Counts Against Brewer

None of the parties question the authority of the trial court to certify its judgments as appealable under Rule 74.01(b). This Court *sua sponte* must determine its jurisdiction of these appeals. *Boley v. Knowles*, 905 S.W.2d 86, 88 (Mo. banc 1995). “A prerequisite to appellate review is that there be a final judgment.” *Id.* citing § 512.020. If the trial court’s judgments are not final, this Court lacks jurisdiction and the appeals must be dismissed. *Committee for Educ. Equality v. State*, 878 S.W.2d 446, 454 (Mo. banc 1994). An appealable judgment resolves all issues in a case, leaving nothing for future determination. *Boley*, 905 S.W.2d at 88.

Rule 74.01(b) provides an exception to this “finality rule” for cases with multiple claims. A trial court may enter judgment on less than all claims and certify that there is “no just reason for delay.” *Id.* The designation by a trial court that its order is final and appealable is not conclusive. *Klippel v. Watkins*, 667 S.W.2d 28, 30 (Mo.App.1984). It is the content, substance, and effect of the order that determines finality and appealability. *Ersion v. Cusumano*, 691 S.W.2d 310, 312 (Mo.App.1985).

Although a circuit court may designate its judgment final as to particular claims, this designation is effective only when the order disposes of a distinct “judicial unit.” *Ersion*, 691 S.W.2d at 312; *See J. Lewin Bookbinding Co. v. Holliston Mills*, 665 S.W.2d 375, 377 (Mo.App.1984); *Lake v. Durham Life Ins. Co.*, 663 S.W.2d 322, 323–24 (Mo.App.1983). The required “judicial unit for an appeal” has a settled meaning: “the final judgment on a claim, and not a ruling on some of several issues arising out of the same transaction or occurrence which does not dispose of the claim.” *State ex rel. State Hwy. Comm’n v. Smith*, 303 S.W.2d 120, 123 (Mo.1957). “An order dismissing some of several alternative counts, each stating only one legal theory to recover damages for the same wrong, is not considered an appealable judgment while the other counts remain pending because the counts are concerned with a single fact situation.” *Weir v. Brune*, 364 Mo. 415, 262 S.W.2d 597, 600 (1953). It is “differing,” “separate,” “distinct” transactions or occurrences that permit a separately appealable judgment, not differing legal theories or issues presented for recovery on the same claim. *Id.*

True, this Court once stated that the court of appeals’ decisions cited in the preceding paragraphs should no longer be followed. *Speck v. Union Elec. Co.*, 731 S.W.2d 16, 20 n. 2 (Mo. banc 1987). However, this Court more recently called these cases “well-reasoned decisions.” *Committee for Educ. Equality v. State*, 878 S.W.2d at 454. Footnote 2 in *Speck* is, in fact, the authority that should not be followed, because, the very year *Speck* was decided, this Court adopted Rule 74.01(b) and repealed Rule 81.06 (that *Speck* had applied)—with the result that *Speck* was “rethought,” *id.*, and the cases cited in this opinion are again good law.

Here the circuit court did not dismiss the Gibsons’ counts for battery, negligent infliction of emotional distress, and intentional infliction of emotional distress against Brewer, which remain pending in the trial court. The other counts purportedly certified as final and appealable—breach of fiduciary duty and conspiracy—expressly incorporate the same facts as the counts pending in the circuit court. The pending counts clearly arise from the same set of facts, and the same transactions and occurrences, as the counts supposedly appealed. Accordingly, the trial court did not resolve a single, distinct judicial unit, and its judgment is *245 neither final nor appealable as to the claims against Brewer. This Court has no jurisdiction of the appeals by or against Brewer, which are hereby dismissed. *See Ersion*, 691 S.W.2d at 312.

III. Counts Against the Diocese

The circuit court dismissed all counts against the Diocese. Accordingly, the trial court resolved all legal issues and left open no remedies for the Gibsons against the Diocese. A circuit court may enter judgment as to fewer than all parties and certify that there is “no just reason for delay.” *Rule 74.01(b)*. When one defendant, but not all defendants, is dismissed from a case, the trial court may designate its judgment as final “for purposes of appeal.” *Spires v. Edgar*, 513 S.W.2d 372, 375 (Mo. banc 1974). The circuit court did not abuse its discretion in determining that the judgments in favor of the Diocese were final and appealable. This Court has jurisdiction over the appeals against the Diocese. *Mo. Const. art. V, § 10*.

Review of dismissal of a petition allows pleadings their broadest intendment, treats all facts alleged as true, construes all allegations favorably to plaintiff, and determines whether averments invoke principles of substantive law. *Farm Bureau Town & Country Ins. v. Angoff*, 909 S.W.2d 348, 351 (Mo. banc 1995).

A. Failure To State A Claim

1. Breach of Fiduciary Duty

The Gibsons allege that the Diocese “stood in a fiduciary relationship with the plaintiffs as recipients of services controlled, directed and/or monitored by the defendant Diocese,” and that the Diocese “held a fiduciary relationship of trust and confidence with the Gibsons.” Other than these general conclusions, the Gibsons simply incorporate—as a “breach of fiduciary duty”—the other factual allegations in their petition.

Missouri is a fact-pleading state. *Luethans v. Washington University*, 894 S.W.2d 169, 171 (Mo. banc 1995). Pleadings must contain a “short and plain statement of the facts showing that the pleader is entitled to relief.” *Rule 55.05*. Fact-pleading presents, limits, defines and isolates the contested issues for the trial court and the parties in order to expedite a trial on the merits. *Luethans*, 894 S.W.2d at 171–72.

The count of breach of fiduciary duty does not comply with the basic pleading rules. The trial court did not err in dismissing this count for failure to state a claim.

2. Conspiracy

The Gibsons allege that the Diocese conspired with Brewer to commit acts of sexual misconduct and intentional infliction of emotion distress, because it (1) knew or should have known that Brewer was committing sexual misconduct and failed to take any action to prevent it or to warn them, (2) failed to remove Brewer from his position, (3) hid the conduct of Brewer and other priests from the public, (4) refused to acknowledge the problem or educate the public, (5) ignored the problem, and (6) extracted confidentiality agreements from sex abuse victims.

A civil conspiracy is an agreement or understanding between persons to do an unlawful act, or to use unlawful means to do a lawful act. *Ritterbusch v. Holt*, 789 S.W.2d 491, 494 (Mo. banc 1990). A plaintiff must establish that two or more persons with an unlawful objective, after a meeting of the minds, committed at least one act in furtherance of the conspiracy, damaging the plaintiff. *Rice v. Hodapp*, 919 S.W.2d 240, 245 (Mo. banc 1996).

The Gibsons' allegations do not support the inference of a “meeting of the minds.” The trial court properly dismissed the conspiracy count for failure to state a claim upon which relief can be granted.

3. Respondeat Superior/Agency Liability

The Gibsons state the conclusion that Brewer was “acting in the course and scope of authority given him by defendant when he committed the acts alleged.” Under the doctrine of *respondeat superior*, a principal is liable for its agent's acts that are (1) within the scope of employment and (2) done *246 as a means or for the purpose of doing the work assigned by the principal. *Henderson v. Laclede Radio, Inc.*, 506 S.W.2d 434, 436 (Mo.1974); *Linam v. Murphy*, 360 Mo. 1140, 232 S.W.2d 937, 941 (1950). Even the authorities cited by the Gibsons acknowledge that intentional sexual misconduct and intentional infliction of emotional distress are not within the scope of employment of a priest, and are in fact forbidden. See e.g., *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584, 588 (1991); *Konkle v. Henson*, 672 N.E.2d 450,

457 (Ind.App.1996). On the facts pleaded in this case, the Diocese is not liable under an agency theory.

B. The First Amendment

The Gibsons argue that the trial court erred in dismissing their claims, based on the First Amendment: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof....” *U.S. Const., Amend. I*. The First Amendment applies to the states by incorporation into the Fourteenth Amendment. See *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940); *Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451, 454 (Mo.1959). The First Amendment applies to any application of state power, including judicial decision on a state's common law. *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 191, 80 S.Ct. 1037, 1038, 4 L.Ed.2d 1140 (1960).

None of the parties cite, let alone discuss, the religion clauses of the Missouri Constitution, article I, sections 5–7. This Court has held “that the provisions of the Missouri Constitution declaring that there shall be a separation of church and state are not only more explicit but more restrictive” than the First Amendment. *Paster v. Tussey*, 512 S.W.2d 97, 101–02 (Mo. banc 1974). Therefore, this Court does not address the applicability, if any, of the Missouri Constitution to this case.

1. Negligent Hiring/Ordination/Retention of Clergy

The Gibsons allege that the Diocese was negligent in “hiring/ordaining” and then retaining Brewer. Negligence is “conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.” *Restatement (Second) of Torts sec. 282* (1965). To establish a claim for negligent hiring or retention, a plaintiff must show: (1) the employer knew or should have known of the employee's dangerous proclivities, and (2) the employer's negligence was the proximate cause of the plaintiff's injuries. *Gaines v. Monsanto Co.*, 655 S.W.2d 568, 571 (Mo.App.1983). See also *McHaffie v. Bunch*, 891 S.W.2d 822, 825–26 (Mo. banc 1995); *Porter v. Thompson*, 357 Mo. 31, 206 S.W.2d 509, 512 (1947).

Religious organizations are not immune from civil liability for the acts of their clergy. *H.R.B. v. J.L.G.*, 913 S.W.2d 92, 98 (Mo.App.1995). If neutral principles of law can be applied

without determining questions of religious doctrine, polity, and practice, then a court may impose liability. *Presbyterian Church v. Mary Eliz. Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969); *Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775 (1979); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465, 467–68 (Mo. banc 1984). For example, a church can be vicariously liable for the negligent operation of a vehicle by a pastor in the scope of employment. See, e.g., *Garber v. Scott*, 525 S.W.2d 114, 119–20 (Mo.App.1975); cf. *Cox v. New Hampshire*, 312 U.S. 569, 574, 578, 61 S.Ct. 762, 765, 767, 85 L.Ed. 1049 (1941). This Court—when abolishing the doctrine of charitable immunity in Missouri—authorized a person who slipped and fell on church premises to sue for negligence. *Garnier v. St. Andrew Presbyterian Church of St. Louis*, 446 S.W.2d 607, 608 (Mo. banc 1969). “The result is that the church, as the owner and occupier of the premises in question, is subject to all the duties and liabilities which are incident to the ownership and possession of real estate.” *Claridge v. Watson Terrace Christian Church*, 457 S.W.2d 785, 787 (Mo. banc 1970).

Questions of hiring, ordaining, and retaining clergy, however, necessarily involve interpretation of religious doctrine, policy, *247 and administration. Such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment. See *Agostini v. Felton*, 521 U.S. 203, —, 117 S.Ct. 1997, 2015, 138 L.Ed.2d 391 (1997); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708–11, 96 S.Ct. 2372, 2380–81, 49 L.Ed.2d 151, reh. denied, 429 U.S. 873, 97 S.Ct. 191, 50 L.Ed.2d 155 (1976). See also *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 727, 20 L.Ed. 666 (1871).

By the same token, judicial inquiry into hiring, ordaining, and retaining clergy would result in an endorsement of religion, by approving one model for church hiring, ordination, and retention of clergy. *Agostini*, 521 U.S. at —, 117 S.Ct. at 2015. A church's freedom to select clergy is protected “as a part of the free exercise of religion against state interference.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116, 73 S.Ct. 143, 154–55, 97 L.Ed. 120 (1952). See also *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16, 50 S.Ct. 5, 7–8, 74 L.Ed. 131 (1929); *Scharon v. St. Luke's Episcopal Presbyterian Hosp.*, 929 F.2d 360, 363 (8th Cir.1991). Ordination of a priest is a “quintessentially religious” matter, “whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Serbian*

E. Orthodox Diocese v. Milivojevic, 426 U.S. at 720, 96 S.Ct. at 2385. The trial court did not err in dismissing the claims of negligent hiring/ordination/retention.

2. Negligent Failure to Supervise Clergy

The Gibsons allege that after Brewer was hired/ordained, the Diocese had a duty to supervise his activities, which it failed to do. The Gibsons assert that the Diocese “knew or reasonably should have known of prior sexual misconduct and/or a propensity to such conduct” by Brewer.

Negligent supervision implicates the duty of a master to control conduct of a servant:

A master is under the duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them if

- (a) the servant
 - (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
 - (ii) is using a chattel of the master, and
- (b) the master
 - (i) knows or has reason to know that he has the ability to control his servant, and
 - (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts, sec. 317 (1965). See also *Conroy v. City of Ballwin*, 723 S.W.2d 476, 479 (Mo.App.1986).

Adjudicating the reasonableness of a church's supervision of a cleric—what the church “should know”—requires inquiry into religious doctrine. Based on the authorities cited in section III.B.1, this would create an excessive entanglement, inhibit religion, and result in the endorsement of one model of supervision. See *Agostini*, 521 U.S. at —, 117 S.Ct. at 2015; *Kedroff*, 344 U.S. at 116, 73 S.Ct. at 154–55; *Gonzalez*, 280 U.S. at 16, 50 S.Ct. at 7–8; *Scharon*, 929 F.2d at 363;

Serbian E. Orthodox Diocese v. Milivojevic, 426 U.S. at 720, 96 S.Ct. at 2385.

Not recognizing the cause of negligent failure to supervise clergy is not an establishment of religion because it is a “nondiscriminatory religious-practice exemption.” *Employment Division v. Smith*, 494 U.S. 872, 879, 110 S.Ct. 1595, 1606, 108 L.Ed.2d 876 (1990). It achieves “a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.” *Walz v. Tax Commission*, 397 U.S. 664, 669, 90 S.Ct. 1409, 1412, 25 L.Ed.2d 697 (1970); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334, 107 S.Ct. 2862, 2867–68, 97 L.Ed.2d 273 (1987). Nonrecognition of this negligence tort preserves “the autonomy and freedom of religious bodies *248 while avoiding any semblance of established religion.” *Walz*, 397 U.S. at 672, 90 S.Ct. at 1413.

This Court has considered the cases cited by the Gibsons. See *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo.1993), *cert. denied*, 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994); *Destefano v. Grabrian*, 763 P.2d 275 (Colo.1988); *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991); *Konkle v. Henson*, 672 N.E.2d 450 (Ind.App.1996); *Erickson v. Christenson*, 99 Or.App. 104, 781 P.2d 383 (1989); *Jones v. Trane*, 153 Misc.2d 822, 591 N.Y.S.2d 927 (Sup.1992). For the reasons stated, this Court finds other cases more persuasive. *L.L.N. v. Chauder*, 209 Wis.2d 674, 563 N.W.2d 434 (1997); *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis.2d 302, 533 N.W.2d 780 (1995), *cert. denied*, 516 U.S. 1116, 116 S.Ct. 920, 133 L.Ed.2d 849 (1996); *Swanson v. Roman Catholic Bishop of Portland*, 692 A.2d 441 (Me.1997); *Dausch v. Rykse*, 1993 WL 34873 (N.D.Ill.1993), *affirmed in part and reversed in part on other grounds*, 52 F.3d 1425 (7th Cir.1994); *Schmidt v. Bishop*, 779 F.Supp. 321 (S.D.N.Y.1991); *Roppolo v. Moore*, 644 So.2d 206 (La.App.1994).

3. Intentional Failure to Supervise Clergy

Recognizing the tort of intentional failure to supervise clergy, in contrast, does not offend the First Amendment.

The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law

of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).

Employment Division, 494 U.S. at 879, 110 S.Ct. at 1600, approved in *City of Boerne v. Flores*, 521 U.S. 507, —, —, 117 S.Ct. 2157, 2161, 2171, 138 L.Ed.2d 624 (1997) [internal quotation marks omitted].

This rule clearly applies to “generally applicable criminal law.” *Employment Division*, 494 U.S. at 884, 110 S.Ct. at 1603. It also logically applies to intentional torts. Religious conduct intended or certain to cause harm need not be tolerated under the First Amendment. See *Cantwell*, 310 U.S. at 308, 60 S.Ct. at 905. Intent denotes “that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.” *Restatement (Second) of Torts sec. 8A* (1965). An actor intends conduct when he “knows that the consequences are certain, or substantially certain, to result” from his act. *Id. at cmt. b.*

A cause of action for intentional failure to supervise clergy is stated if (1) a supervisor (or supervisors) exists (2) the supervisor (or supervisors) knew that harm was certain or substantially certain to result, (3) the supervisor (or supervisors) disregarded this known risk, (4) the supervisor's inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, section 317 are met. This cause of action requires a supervisor. The First Amendment does not, however, allow a court to decide issues of church government—whether or not a cleric should have a supervisor. See *Kedroff*, 344 U.S. at 116, 73 S.Ct. at 154.

Here, giving the allegations of the petition their broadest intendment, the Gibsons have alleged that the Diocese knew that harm was certain or substantially certain to result from its failure to supervise Brewer, and thus have stated a cause of action for intentional failure to supervise clergy. The trial court erred in dismissing this claim.

4. Negligent Infliction of Emotional Distress

The Gibsons allege that, after they reported the sexual misconduct, the Diocese negligently inflicted emotional distress on them by: failing to investigate, covering up the

incident, and making the statements “this happens to young men all the time,” this was “an innocent pat on the butt” and they should “forgive and forget” and get on with their lives.

To prevail under negligent infliction of emotional distress, a plaintiff must show: (1) the defendant should have realized that its conduct involved an unreasonable risk of causing the distress, and (2) the emotional distress or mental injury must be medically *249 diagnosable and sufficiently severe to be medically significant. *Bass v. Nooney Co.*, 646 S.W.2d 765, 772–73 (Mo. banc 1983).

The Gibsons' claim is related not to the relationship between the Diocese and its clergy, but rather to the relationship between the Diocese and its parishioners. To determine whether the Diocese's responses to its members' claims were “reasonable,” a court would inevitably judge the reasonableness of religious beliefs, discipline, and government. Applying a negligence standard to the actions of the Diocese in dealing with its parishioners offends the First Amendment.

In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastic tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decision as binding upon them.

Serbian E. Orthodox Diocese, 426 U.S. at 724–25, 96 S.Ct. at 2387–88. The trial court did not err in dismissing the Gibsons' claim for negligent infliction of emotional distress against the Diocese.

5. Intentional Infliction of Emotional Distress

The Gibsons allege that the Diocese's conduct was extreme and outrageous in “allowing the assault to happen, and in covering up the incident and other such incidents by

defendant Brewer and other priests, by failing to properly investigate, and in their treatment of the Gibsons after the assault.” They further allege that the Diocese “acted intentionally.”

To state a claim for intentional infliction of emotional distress, a plaintiff must plead extreme and outrageous conduct by a defendant who intentionally or recklessly causes severe emotional distress that results in bodily harm. *K.G. v. R.T.R.*, 918 S.W.2d 795, 799 (Mo. banc 1996). The conduct must have been “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Warren v. Parrish*, 436 S.W.2d 670, 673 (Mo. 1969). The conduct must be “intended only to cause extreme emotional distress to the victim.” *K.G.*, 918 S.W.2d at 799.

As discussed, under the First Amendment, liability for intentional torts can be imposed without excessively delving into religious doctrine, polity, and practice. *See Cantwell*, 310 U.S. at 307–08, 60 S.Ct. at 904–05. However, the Gibsons have failed to state a claim. Intentional infliction of emotional distress requires not only intentional conduct, but conduct that is intended only to cause severe emotional harm. *K.G.*, 918 S.W.2d at 799. The Gibsons’ allegations do not support the inference that the Diocese’s sole purpose in its conduct was to invade the Gibsons’ interest in freedom from emotional distress. *See id.* at 799–800. The trial court did not err in dismissing the Gibsons’ claim.

6. Independent Negligence of the Diocese

The Gibsons allege several acts of negligence by the Diocese: (1) failing to have a policy to prevent sexual abuse of minors, (2) concealing unlawful sexual acts and abuse by failing to educate and accurately inform the public, (3) ignoring and failing to investigate complaints, (4) trying to silence claims and prevent members and the public from discovering priests accused of sexual misconduct, and (5) failing to evaluate the propensity of priests to engage in improper sexual conduct.

To establish a negligence claim, a plaintiff must show: (1) defendant had a duty to the plaintiff; (2) defendant failed to perform that duty; and (3) defendant’s breach was the proximate cause of the plaintiff’s injury. *Martin v. City of Washington*, 848 S.W.2d 487, 493 (Mo. banc 1993).

Whether negligence exists in a particular situation depends on whether or not a reasonably prudent person would have anticipated danger and provided against it. *Scheibel v. Hillis*, 531 S.W.2d 285, 288 (Mo. banc 1976). In order to determine how a *250 “reasonably prudent Diocese” would act, a court would have to excessively entangle itself in religious doctrine, policy, and administration.

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, ... and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

Serbian, 426 U.S. at 711, 96 S.Ct. at 2381, quoting *Watson*, 80 U.S. at 728–29. Church members give their “implied consent” to be “subject only to such appeals as the organism itself provides for.” *Id.* The trial court did not err in dismissing the claims of independent negligence by the Diocese.

IV.

The appeal and cross-appeal involving Brewer’s liability are dismissed. The dismissal of the claim of intentional failure to supervise against the Diocese is reversed, but the remainder of the judgment dismissing all other counts against the Diocese is affirmed. The case is remanded for proceedings consistent with this opinion.

LIMBAUGH, ROBERTSON, COVINGTON, WHITE and HOLSTEIN, JJ., and FLANIGAN, Senior Judge, concur.

PRICE, J., not sitting.

All Citations

952 S.W.2d 239

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950 S.W.2d 232
Supreme Court of Missouri,
En Banc.

Nicholas GRAY, Appellant–Respondent,

v.

Father Thomas J. WARD and, Catholic Diocese of
Kansas City St. Joseph Respondents–Appellants.

No. 79299.

|

Aug. 19, 1997.

Synopsis

Parishioner with whom priest allegedly initiated sexual relationship when parishioner was 14 years old filed petition for damages against priest and diocese on variety of legal theories. The Circuit Court, Jackson County, Gene R. Martin, J., dismissed all but one count against priest, and dismissed all counts against diocese. Parishioner appealed and priest cross-appealed. Granting transfer after opinion by the Court of Appeals, the Supreme Court, Benton, C.J., held that: (1) trial court's judgment as to claims against priest was neither final nor appealable; (2) judgment dismissing claims against diocese was final and appealable; (3) parishioner failed to state claim for conspiracy against diocese; (4) diocese could not be held liable for priest's conduct under agency theory; (5) parishioner failed to state claim against diocese for breach of fiduciary duty; (6) claims against diocese for negligent hiring/ordination/retention of clergy, negligent failure to supervise clergy, and independent acts of negligence were barred by First Amendment; but (7) claim against diocese for intentional failure to supervise clergy was not barred by First Amendment.

Appeal and cross-appeal dismissed, reversed in part, affirmed in part, and remanded.

See also, 1997 WL 471934.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

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James Wyrsh, James P. Tierney, William M. Stapleton, Brian J. Madden, Kansas City, for Respondents–Appellants.

Carl H. Esbeck, John K. Hulston, Columbia, Timothy Belz, Center for Law & Religious Freedom of the Christian Legal Society, etc., St. Louis, for Amicus Curiae.

Opinion

BENTON, Chief Justice.

Nicholas Gray appeals judgments of the circuit court dismissing all but one count of his petition against Father Thomas Ward and all counts against The Catholic Diocese of Kansas City–St. Joseph. Ward purports to cross-appeal the trial court's failure to dismiss the remaining count.

The circuit court determined that there was no just reason to delay the appeals. *Rule 74.01(b)*. After opinion by the Court of Appeals, Western District, this Court granted transfer and now affirms in part, reverses in part, dismisses all appeals by or against Ward, and remands.

I.

This case was decided on motions to dismiss, prior to answer and discovery. Therefore, the facts are assumed as averred in the petitions. See *Johnson v. Kraft General Foods*, 885 S.W.2d 334, 335 (Mo. banc 1994).

Gray alleges that when he was about 14 years old, he went to Father Ward, a Catholic priest, for confession and counseling about various concerns, some of a sexual nature. Ward then initiated a sexual relationship with Gray that lasted about 10 years. Gray alleges that when Ward was “hired/ordained,” the Diocese “knew or reasonably should have known of prior sexual misconduct and/or a propensity to such conduct” by Ward. Gray also asserts that the Diocese had a duty to supervise Ward's activities.

Gray filed a petition for damages alleging five counts against Ward: negligence, negligent infliction of emotional distress, intentional infliction of emotional distress, breach of fiduciary duty, and conspiracy. As for the Diocese, Gray alleged six counts: conspiracy, respondeat superior/agency, negligent hiring/ordination and retention, negligent failure to supervise, breach of fiduciary duty, and independent acts of negligence.

The circuit court issued two judgments. One dismissed all counts against the Diocese for “failure to state a claim upon which relief can be granted and because such claims as alleged

against defendant infringe upon its rights provided by the First Amendment to the United States Constitution.” The other judgment dismissed all counts against Ward except intentional infliction of emotional distress.

II. Counts Against Ward

The circuit court did not dismiss Gray's count of intentional infliction of emotional distress against Ward, which pends in the trial court. That pending count, by its wide-ranging facts, includes the same transactions or occurrences alleged in the counts purportedly certified as final—negligent infliction of emotional distress, breach of fiduciary duty, conspiracy, and negligence. Accordingly, the trial court did not resolve a single judicial unit, and its judgment is neither final nor appealable as to the claims against Ward. *See Gibson v. Brewer*, 952 S.W.2d 239, 244 (Mo. banc 1997). This Court *234 has no jurisdiction of the appeals by or against Ward, which are hereby dismissed.

III. Counts Against the Diocese

The circuit court dismissed all counts against the Diocese. Accordingly, the trial court resolved all legal issues and left open no remedies for Gray against the Diocese. The circuit court did not abuse its discretion in determining the judgments against the Diocese were final and appealable under Rule 74.01(b). *See Gibson*, 952 S.W.2d at 244. This Court has jurisdiction over the appeals against the Diocese. *Mo. Const. art. I, § 10*.

Review of dismissal of a petition allows pleadings their broadest intendment, treats all facts alleged as true, construes all allegations favorably to plaintiff, and determines whether averments invoke principles of substantive law. *Farm Bureau Town & Country Ins. v. Angoff*, 909 S.W.2d 348, 351 (Mo. banc 1995).

A. Failure To State A Claim

1. Conspiracy

Gray alleges that the Diocese conspired with Ward to commit acts of sexual misconduct and intentional infliction of emotional distress, because it (1) knew or should have

known that Ward and other priests were committing sexual acts with minors and knew or should have known that Ward and other priests had the propensity to commit said acts, (2) failed to take any action to prevent the actions or warn Gray, (3) failed to remove Ward from his position, (4) hid the conduct of Ward and other priests from the public, (5) refused to acknowledge the problem or educate the public, and (6) ignored the problem.

Gray's allegations do not support the required inference of a “meeting of the minds” between the Diocese and Ward. *See Gibson*, 952 S.W.2d at 244–245. The trial court properly dismissed the conspiracy count for failure to state a claim.

2. Respondeat Superior/Agency Liability

Gray states the conclusion that Ward was “acting in the course and scope of authority when he committed the above acts.” Intentional sexual activity and intentional infliction of emotional distress do not fall within the scope of employment of a priest, and the Diocese cannot be held liable under an agency theory. *See Gibson*, 952 S.W.2d at 245.

3. Breach of Fiduciary Duty

Gray alleges that, in sum, the Diocese “stood in a fiduciary relationship with the Plaintiff as a recipient of religious services,” “held a fiduciary relationship of trust and confidence with the Plaintiff,” and “had a duty to its parishioners and especially young boys such as the plaintiff to protect them, especially in those situations where they shared the inner most feelings with priests.”

These allegations simply are a recharacterization of those in Gray's other claims. The trial court did not err in dismissing this count for failure to state a claim.

B. The First Amendment

Gray argues that the trial court erred in finding his claims barred by the First Amendment: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof....” *U.S. Const., Amend. I*. For the reasons stated in *Gibson v. Brewer*, the trial court did not err in dismissing Gray's counts of negligent hiring/ordination/retention of clergy, negligent failure to supervise clergy, and

independent acts of negligence (which are virtually identical to those pleaded in the *Gibson* case). *See Gibson*, 952 S.W.2d at 245–247, 247–249. Likewise, the trial court did err in dismissing Gray's count of intentional failure to supervise clergy. *See id.* 952 S.W.2d at 247.

IV.

The appeal and cross-appeal involving Ward's liability are dismissed. The dismissal of the count of intentional failure to supervise against the Diocese is reversed, but the remainder

*235 of the judgment dismissing all other counts against the Diocese is affirmed. The case is remanded for proceedings consistent with this opinion.

LIMBAUGH, ROBERTSON, COVINGTON, WHITE and HOLSTEIN, JJ., and FLANIGAN, Senior Judge, concur.

PRICE, J., not sitting.

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311 S.W.3d 818
Missouri Court of Appeals,
Eastern District,
Division Four.

Mary SN DOE, Appellant,

v.

ROMAN CATHOLIC ARCHDIOCESE OF
ST. LOUIS, an unincorporated association,
and Archbishop Raymond Burke, of the
Archdiocese of St. Louis, MO, Respondents.

No. ED 93007.

|

Feb. 23, 2010.

|

Application for Transfer to Supreme Court
Denied March 29, 2010.

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Application for Transfer Denied
June 29, 2010.

Synopsis

Background: Adult victim of child sexual abuse by priest of her childhood church, which priest later died, brought action against Roman Catholic archdiocese and archbishop, asserting child sexual abuse and battery, breach of fiduciary duty, negligence, negligent supervision of children, and negligent supervision, retention, and failure to warn. The Circuit Court, City of St. Louis, David L. Dowd, J., entered summary judgment against adult victim. Adult victim appealed from dismissal of the negligence-based claims.

The Court of Appeals, Kurt S. Odenwald, P.J., held that the Circuit Court was bound to follow controlling case law barring negligent supervision and hiring claims regarding sexually abusive clerics.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

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Edward M. Goldenhersh, Bernard C. Huger, Robert L. Duckels, Kirsten M. Ahmad, Greensfelder, Hemker & Gale, P.C., St. Louis, MO, for Respondents.

KURT S. ODENWALD, Presiding Judge.

Introduction

Plaintiff Mary SN Doe (Appellant) appeals the trial court's dismissal of certain negligence-based claims contained in her action filed against the Roman Catholic Archdiocese of St. Louis (Archdiocese) and Archbishop Raymond Burke (Archbishop). We affirm the trial court's dismissal.

Facts and Procedural Background

Appellant alleges she was sexually abused by Father William Poepperling *820 when she was approximately four to six years of age in the late 1950s. Appellant attended Holy Guardian Angels Church in St. Louis, Missouri, where Father Poepperling served. Fr. Poepperling died on May 18, 1983.

Appellant filed this suit against the Archdiocese and Archbishop (Respondents) on April 26, 2005, and filed an Amended Petition on January 29, 2008. Appellant alleged six counts: (I) Child Sexual Abuse and/or Battery; (II) Breach of Fiduciary Duty; (III) Negligence; (IV) Negligent Supervision, Retention, and Failure to Warn; (V) Intentional Failure to Supervise Clergy; and (VI) Negligent Supervision of Children.

As to counts III, IV, and VI (hereinafter referred to as "negligence-based counts"), Appellant alleged that Fr. Poepperling "was under the direct supervision, employ and control of" Respondents, and that "[a]ll acts of sexual abuse ... took place during functions in which Fr. Poepperling had custody or control of [Appellant] in his role as a priest and authority figure." Appellant alleged that Respondents "reasonably should have known of Fr. Poepperling's dangerous and exploitive propensities." Appellant alleged that, despite such knowledge, Respondents failed to: (1) protect her from Fr. Poepperling's sexual abuse; (2) remove Fr. Poepperling; (3) supervise Fr. Poepperling in his position of trust and authority as a Roman Catholic priest;

or (4) provide adequate warning to her and her family of Fr. Poepperling's dangerous proclivities.

On February 8, 2008, Respondents filed a Motion to Dismiss Counts I, II, III, IV, and VI. On May 23, the trial court entered an order granting Respondents' motion and dismissing each of those counts.

On September 12, 2008, Respondents filed a Motion for Summary Judgment with respect to Count V. On April 10, 2009, the trial court entered an order and judgment granting Respondents summary judgment on Count V, and subsequently entered final judgment as to all six counts contained in Appellant's Amended Petition.

Appellant appeals to this Court only the trial court's dismissal of Counts III, IV, and VI, the negligence-based counts.¹

Trial Court's Dismissal of Negligence-Based Counts

In dismissing Appellant's pure negligence claim (Count III) and negligent supervision of children claim (Count VI), the trial court, relying on *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. banc 1997), explained that “[i]n order to determine how a ‘reasonably prudent Archdiocese’ would act, a court would have to excessively entangle itself in religious doctrine, policy, and administration.” (internal citation omitted). Thus, the trial court concluded that a “claim of negligence can not [sic] be maintained against [Respondents] as it violates the First Amendment.”

In dismissing Appellant's claim for negligent supervision, retention, and failure to warn (Count IV), the trial court again relied upon *Gibson* for its findings. The trial court separately addressed Appellant's negligent supervision, negligent retention, and negligent failure to warn allegations. As to Appellant's negligent supervision allegation, the trial court found that “adjudicating the reasonableness *821 of a church's supervision of a cleric requires inquiry into religious doctrine that is prohibited by the First Amendment to the U.S. Constitution.” As to her negligent retention allegation, the trial court found that “questions of hiring, ordaining, and retaining clergy ‘necessarily involve interpretation of religious doctrine, policy, and administration’ that has the effect of inhibiting religion in violation of the First Amendment.” (internal citation omitted). As to her negligent failure to warn allegation, the trial court found that “[i]n order to determine whether [Respondents] owed [Appellant] a duty

to warn, a court would have to excessively entangle itself in religious doctrine, policy, and administration.” Thus, the trial court concluded that “[t]he claims in Count IV must be dismissed.”

Point on Appeal

In her sole point on appeal, Appellant contends that the trial court erred in dismissing her three negligence-based counts pursuant to the Missouri Supreme Court's decision in *Gibson* because *Gibson* fails to comport with United States Supreme Court precedent.

Preservation of Issue for Appeal

An issue that was never presented to or decided by the trial court is not preserved for appellate review. *State ex rel. Nixon v. Am. Tobacco Co., Inc.*, 34 S.W.3d 122, 129 (Mo. banc 2000); Rule 84.13(a).²

Respondents characterize Appellant's point on appeal as an invocation of Supremacy Clause principles, which undermine the trial court's reliance on *Gibson*. Respondents further argue that Appellant has raised her Supremacy Clause argument for the first time on appeal, and therefore, has not preserved this argument for appeal. We note that Appellant did not expressly refer to the Supremacy Clause, or the general principle that the United States Supreme Court provides the ultimate authority on interpretations of federal constitutional law in its pleadings filed with the trial court. However, Appellant's Response to Respondents' Motion to Dismiss posited that the Missouri Supreme Court in *Gibson* “mishandled the overall First Amendment issues.” In so asserting, Appellant carefully examined United States Supreme Court jurisprudence regarding the Free Exercise Clause, the Establishment Clause, and judicial abstention in intra-church disputes. Therefore, we conclude that Appellant sufficiently presented her argument to the trial court, and has preserved her Supremacy Clause challenge to the trial court's dismissal of the negligence-based counts.

Standard of Review

An appellate court reviews a trial court's grant of a motion to dismiss de novo. *Moynihan v. Gunn*, 204 S.W.3d 230, 232–

33 (Mo.App. E.D.2006). When reviewing the dismissal of a petition for failure to state a claim, appellate courts treat the facts contained in the petition as true and construe them liberally in favor of the plaintiffs. *Id.* at 233.

Discussion

I. *Gibson v. Brewer*

In *Gibson*, a plaintiff alleged that a member of a diocese's clergy sexually abused him. The defendant-diocese contested the plaintiff's allegations of (1) negligent hiring/retention of clergy, (2) negligent supervision of clergy, and (3) pure negligence. *Gibson*, 952 S.W.2d at 246–50. The Supreme Court of Missouri held that ***822** the United States Constitution's Free Exercise and Establishment Clauses in the First Amendment³ commanded dismissal of such negligence-based claims against religious institutions. *Id.* In so holding, *Gibson* analyzed United States Supreme Court precedent and reasoned that:

Religious organizations are not immune from civil liability for the acts of their clergy. If neutral principles of law can be applied without determining questions of religious doctrine, polity, and practice, then a court may impose liability. *Id.* at 246 (internal citations omitted).

Questions of hiring, ordaining, and retaining clergy, however, necessarily involve interpretations of religious doctrine, policy and administration. Such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment. *Id.* at 246–47 (internal citations omitted).

By the same token, judicial inquiry into hiring, ordaining, and retaining clergy would result in an endorsement of religion, by approving one model for church hiring, ordination, and retention of clergy. A church's freedom to select clergy is protected 'as a part of the free exercise of religion against state interference.' Ordination of a priest is a 'quintessentially religious' matter, 'whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.' *Id.* at 247 (internal citations omitted).

Adjudicating the reasonableness of a church's supervision of a cleric—what the church 'should know'—requires inquiry into religious doctrine.... [T]his

would create an excessive entanglement, inhibit religion, and result in the endorsement of one model of supervision. *Id.* at 248 (internal citations omitted).

II. *Merits of Appeal*

As mentioned above, Appellant in this case implores us, an intermediate appellate court in the State of Missouri, to disregard clearly established precedent from the Missouri Supreme Court and permit her the opportunity to sustain a negligence action inquiring into whether Respondents "took due care in dealing with an employee who has access to children." Appellant argues that *Gibson's* conclusion, which grants immunity to religious organizations for certain negligence claims, mishandled the First Amendment issue and ignored United States Supreme Court precedent. In addressing the merits of this appeal, our discussion begins and ends with the constraints of our judicial authority vested by the Missouri Constitution.

Missouri's Constitution expressly states that the Missouri Supreme Court "shall be the highest court in the state" and that its "decisions shall be controlling in all other courts." Mo. Const. art. V, Section 2. As such, we are "constitutionally bound to follow the most recent controlling decision of the Missouri Supreme Court," and inquiries questioning the correctness of such a decision are improper. *Independence–Nat. Educ. Ass'n v. Independence Sch. Dist.*, 162 S.W.3d 18, 21 (Mo.App. W.D.2005) (holding a "claim that the Missouri Supreme Court has incorrectly decided a previous case or cases is not cognizable in the Missouri Court of Appeals"); *Noe v. Pipe Works, Inc.*, 874 S.W.2d 502, 504 (Mo.App. E.D.1994) ("[W]e are constitutionally without authority to overrule the ***823** controlling decisions of the Supreme Court.").

Though meriting our respect, decisions of the federal district and intermediate appellate courts and decisions of other state courts are not binding on us. *State v. Mack*, 66 S.W.3d 706, 710 (Mo. banc 2002) (holding "general declarations of law made by lower federal courts do not bind this Court"); *Craft v. Philip Morris Co., Inc.*, 190 S.W.3d 368, 380 (Mo.App. E.D.2005) (holding that "[o]ut-of-state appellate decisions do not constitute controlling precedent in Missouri courts"). Decisions of the United States Supreme Court on matters of federal law, however, bind all state courts. See *Chesapeake & Ohio Ry. Co. v. Martin*, 283 U.S. 209, 221, 51 S.Ct. 453, 75 L.Ed. 983 (1931) (holding that United States Supreme Court determinations of federal questions bind all state courts and must be followed notwithstanding any contrary state decision); see *Kraus v. Bd. of Educ. of City of Jennings*,

492 S.W.2d 783, 784–85 (Mo.1973) (“State court judges in Missouri are bound by the ‘supreme law of the land,’ as declared by the Supreme Court of the United States.”) (internal citation omitted).

Thus, a Missouri Supreme Court interpretation of federal constitutional law constitutes the controlling law within our state until either the Missouri Supreme Court or the United States Supreme Court declares otherwise. *See Martin*, 283 U.S. at 221, 51 S.Ct. 453.⁴ While some authority suggests that an intermediate state appellate court should not follow decisions of its state supreme court when those decisions plainly conflict with those of the United States Supreme Court on a federal question,⁵ such suggestion is inconsequential to our review as our examination of United States Supreme Court precedent reveals no decision either directly questioning *Gibson’s* reasoning nor contradicting its holding; nor can we conclude that *Gibson* plainly conflicts with a controlling decision of the United States Supreme Court. Though numerous federal courts⁶ and out-of-state courts⁷ diverge on the *824 issue of whether the religion clauses in the First Amendment bar plaintiffs from asserting certain negligence claims against religious institutions, those decisions do not authoritatively direct us to revisit a First Amendment analysis already conducted by the Supreme Court of Missouri. Such decisions merely inform us that reasonable courts disagree as to the application of First Amendment law to the facts at bar. Appellant devoted a considerable portion of her brief citing and summarizing the numerous lower federal court decisions and state court

decisions supporting her underlying premise that the First Amendment does not prevent her causes of action for negligence. However, Appellant cites no United States Supreme Court case supporting her position, and cites no binding precedent that allows us to ignore the Missouri Supreme Court’s holding in *Gibson*. Simply stated, the *Gibson* Court held that the First Amendment barred the assertion of tort claims against a religious institution based on its alleged negligence in supervising/retaining/hiring sexually abusive clerics. *Gibson*, 952 S.W.2d at 246–50. Until the Missouri Supreme Court or the United States Supreme Court declares differently, *Gibson* constitutes controlling law in Missouri, law which we are bound to apply. As such, the trial court did not err in relying on *Gibson* to dismiss Appellant’s negligence-based counts as a matter of law.

Conclusion

The trial court’s judgment is affirmed as it properly applied *Gibson*, a controlling decision of the Missouri Supreme Court.

GEORGE W. DRAPER III, and GARY M. GAERTNER, JR., JJ., Concur.

All Citations

311 S.W.3d 818

Footnotes

- 1 Appellant’s Notice of Appeal seeks appellate review of the trial court’s Order granting summary judgment as to one count and of the trial court’s Order dismissing the remaining five counts. In her brief, Appellant affirmatively states that she is limiting her appeal to only the trial court’s dismissal of Counts III, IV and VI, the negligence-based counts. Appellant had abandoned her appeal as to Counts I, II, and V.
- 2 All references are to Mo. R. Civ. P.2008, unless otherwise indicated.
- 3 The *Gibson* Court expressly acknowledged that “this Court does not address the applicability, if any, of the Missouri Constitution to this case.” *Gibson*, 952 S.W.2d at 246.
- 4 *State v. Ward*, 231 Wis.2d 723, 604 N.W.2d 517, 525 (2000) (“Our decisions interpreting the United States Constitution are binding law in Wisconsin until this court or the United States Supreme Court declares a different opinion or rule.”); 21 C.J.S. § 216 (2006).
- 5 An annotation to Art. 5, Section 2 of the Missouri Constitution provides a citation to *State ex rel. Mason v. Springfield African Soc. & Improvement Club*, 169 Mo.App. 137, 154 S.W. 458, 458–62 (1913) for this proposition. *See also* 21 C.J.S. § 216 (2006).
- 6 The United States District Court for the Eastern District of Missouri has addressed the same issue as *Gibson*—whether the First Amendment bars negligence actions against a religious institution for failing to supervise its sexually abusive clerics. In several instances, this federal district court held that because *Gibson* circumscribed Missouri’s negligence law

pursuant to the federal constitution, it had a duty to conduct its own constitutional determination. In so doing, at least two decisions clearly held, contrary to *Gibson*, that the religion clauses in the First Amendment do not bar state claims of negligent hiring, retention, and supervision against a religious institution. *Perry v. Johnston*, 654 F.Supp.2d 996, 1003 (E.D.Mo.2009); *John Doe CS v. Capuchin Franciscan Friars*, 520 F.Supp.2d 1124, 1137 (E.D.Mo.2007).

- 7 Among the cases aligned with *Gibson*, decisions by the supreme courts of Maine and Wisconsin provide insight into the rationale for concluding that First Amendment considerations bar certain negligence claims against a religious institution. See *Swanson v. Roman Catholic Bishop of Portland*, 692 A.2d 441, 445 (Me.1997) (acknowledging that because a plaintiff's attack on the reasonableness of a church's mercy towards a sexually abusive cleric may hinge on beliefs in penance, admonition and reconciliation as a sacramental response to sin, "[clerics] cannot be treated in the law as though they were common law employees" and it would be "unconstitutional ... to determine ... that the ecclesiastical authorities negligently supervised or retained [them]"); *L.L.N. v. Clauder*, 209 Wis.2d 674, 563 N.W.2d 434, 441 (1997) (acknowledging that "due to [a] strong belief in redemption, a bishop may determine that a wayward priest can be sufficiently reprimanded through counseling and prayer" and judicial review of whether the bishop should have taken some other action "would directly entangle [the court] in the religious doctrines of faith, responsibility, and obedience"). Among the cases opposed to *Gibson*, decisions by the supreme courts of Mississippi, Florida, and Colorado explain why the First Amendment poses no bar to negligence claims stemming from a sexually abusive cleric. See *Roman Catholic Diocese of Jackson v. Morrison*, 905 So.2d 1213, 1237 (Miss.2005) (holding that "the cloak of religion ... cannot serve to shield [religious] institutions from civil responsibility for ... sexual molestation of a child" and "[n]or should it shield those who fail in their duty to protect children from it"); *Malicki v. Doe*, 814 So.2d 347, 364 (Fla.2002) (emphasizing that because the core inquiry in determining whether a church-defendant should have foreseen the risk of harm to third parties was a "neutral principle of tort law," it did not "foresee 'excessive' entanglement in internal church matters or in interpretation of religious doctrine or ecclesiastical law"); *Moses v. Diocese of Colo.*, 863 P.2d 310, 319–21 (Colo.1993) (holding that the First Amendment did not preclude negligent hiring claim where a diocese knew of priest's problems of depression and struggles with sexual identity).

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311 S.W.3d 825
Missouri Court of Appeals,
Eastern District,
Division Four.

Peggy NICHOLSON, Appellant,

v.

ROMAN CATHOLIC ARCHDIOCESE OF
ST. LOUIS, an unincorporated association,
and Archbishop Raymond Burke, of the
Archdiocese of St. Louis, MO, Respondents.

No. ED 93009.

|
Feb. 23, 2010.

|
Application for Transfer to Supreme Court
Denied March 29, 2010.

|
Application for Transfer Denied
June 29, 2010.

Synopsis

Background: Adult victim of child sexual abuse by priest of her childhood church, which priest later died, brought action against Roman Catholic archdiocese and archbishop, asserting various claims including negligent supervision of children, and negligent supervision, retention, and failure to warn. The Circuit Court, City of St. Louis, David L. Dowd, J., entered summary judgment against adult victim. Adult victim appealed from dismissal of the negligence-based claims.

Holding: The Court of Appeals, Kurt S. Odenwald, P.J., held that the Circuit Court was bound to follow controlling case law barring negligent supervision and hiring claims regarding sexually abusive clerics. The Court of Appeals, Kurt S. Odenwald, P.J., held that the Circuit Court was bound to follow controlling case law barring the negligent supervision-based claims.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

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Edward M. Goldenhersh, Bernard C. Huger, Robert L. Duckels, Kirsten M. Ahmad, Greensfelder, Hemker & Gale, P.C., St. Louis, MO, for Respondents.

KURT S. ODENWALD, Presiding Judge.

Introduction

Plaintiff Peggy Nicholson (Appellant) appeals the trial court's dismissal of certain negligence-based claims contained in her action filed against the Roman Catholic Archdiocese of St. Louis (Archdiocese) and Archbishop Raymond Burke (Archbishop). We affirm the trial court's dismissal.

Facts and Procedural Background

Appellant alleges that from approximately 1953 through 1957, when she was approximately four to eight years of age, Father William Poepperling (Poepperling) sexually abused her. During the time of *826 the alleged abuse, Poepperling served as a Roman Catholic priest at Holy Guardian Angels Church in St. Louis, Missouri. Poepperling died on May 18, 1983.

Appellant filed this suit against the Archdiocese and Archbishop (Respondents) on August 25, 2005. Appellant alleged six counts, two of which she designated as being raised against Poepperling individually even though the petition did not specifically name the late Poepperling as a Defendant in the case caption. The six counts include: (I) Child Sexual Abuse and/or Battery—Defendant Poepperling; (II) Intentional Infliction of Emotional Distress—Defendants Archdiocese and Archbishop; (III) Intentional Infliction of Emotional Distress—Defendant Poepperling; (IV) Negligence—All Defendants; (V) Negligent Supervision, Retention, and Failure to Warn—Defendants Archdiocese and Archbishop; (VI) Intentional Failure to Supervise Clergy—Defendants Archdiocese and Archbishop.

As to counts IV and V (hereinafter referred to as “negligence-based counts”), Appellant alleged that Poepperling “was under the direct supervision, employ and control of” Respondents, and that “[a]ll acts of sexual abuse ... took place during functions in which [] Poepperling had custody or control of [Appellant] in his role as a priest and authority figure.” Appellant alleged that Respondents “reasonably should have known of [] Poepperling’s dangerous and exploitive propensities.” Appellant alleged that, despite such knowledge, Respondents failed to: (1) protect her from Poepperling’s sexual abuse; (2) remove Poepperling; (3) supervise Poepperling in his position of trust and authority as a Roman Catholic priest; or (4) provide adequate warning to her and her family of Poepperling’s dangerous proclivities.

On March 25, 2008, Respondents filed a Motion to Dismiss Counts I, II, IV, and V. On September 30, the trial court entered an order granting Respondents’ motion and dismissing those four counts.¹

On October 3, 2008 Respondents filed a Motion for Summary Judgment with respect to Count VI. On April 9, 2009, the trial court entered an order and judgment granting Respondents’ motion, and subsequently entered final judgment as to all six counts in Appellant’s petition.

Appellant appeals to this Court only the trial court’s dismissal of Counts IV, and VI, the negligence-based counts.²

Trial Court’s Dismissal of Negligence–Based Counts

In dismissing Appellant’s negligence claim (Count IV), the trial court, relying on *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. banc 1997), explained that “Missouri simply does not recognize ‘negligence actions’ against religious organizations based on the sexual misconduct of clergy.”

In dismissing Appellant’s negligent supervision, retention, and failure to warn claim (Count V), the trial court, again relying on *Gibson*, explained that “ ‘adjudicating the

reasonableness of a church’s supervision of a cleric’ requires inquiry into religious doctrine that is prohibited by the *827 First Amendment to the U.S. Constitution.” (internal citation omitted). The trial court explained that the “same is true as to reasonableness of retention and claims of negligent failure to warn.”

Point on Appeal

In its sole point on appeal, Appellant contends that the trial court erred in dismissing her negligence-based counts pursuant to the Missouri Supreme Court’s decision in *Gibson* because *Gibson* fails to comport with United States Supreme Court precedent.

Discussion

This same issue was raised and fully addressed in the companion case of *Mary SN Doe v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 818 (Mo.App. E.D.2010). Based on our analysis and decision in that case, we conclude that the trial court did not err in relying on *Gibson* to dismiss Appellant’s negligence-based counts as a matter of law.

Conclusion

The trial court’s judgment is affirmed as it properly applied *Gibson*, a controlling decision of the Missouri Supreme Court.

GEORGE W. DRAPER III, J., and GARY M. GAERTNER, JR., J., Concur.

All Citations

311 S.W.3d 825

Footnotes

- 1 The trial court also dismissed Appellant’s Count III, even though Respondent’s motion to dismiss did not discuss Count III.
- 2 Appellant’s Notice of Appeal seeks appellate review of the trial court’s Order granting summary judgment as to one count and of the trial court’s Order dismissing the remaining five counts. In her brief, Appellant affirmatively states that she is limiting her appeal to only the trial court’s dismissal of Counts IV and V, the negligence-based counts. Appellant had abandoned her appeal as to Counts I, II, III, and VI.

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347 S.W.3d 588
Missouri Court of Appeals,
Eastern District,
Division Four.

John DOE AP, Plaintiff/Appellant,
v.
ROMAN CATHOLIC ARCHDIOCESE OF
ST. LOUIS, et al., Defendants/Respondents.

No. ED 94720.

|
July 5, 2011.

|
Motion for Rehearing and/or Transfer to
Supreme Court Denied Aug. 22, 2011.

|
Application for Transfer Denied
Oct. 4, 2011.

Synopsis

Background: Plaintiff brought action against Roman Catholic Archdiocese, priest, and archbishop in his official capacity, asserting several tort claims based on his alleged sexual abuse by priest while he was a child in priest's counsel, including claim for intentional failure to supervise clergy. All claims against Archdiocese, except intentional failure to supervise, were dismissed, and plaintiff dismissed claims against priest following priest's death. Subsequently, the Circuit Court, City of St. Louis, Donald L. McCullin, J., entered summary judgment against plaintiff on the remaining claim. Plaintiff appealed.

The Court of Appeals, Robert D. Dowd, Jr., J., held that since the alleged abuse did not occur on premises controlled by Archdiocese, it was not liable for intentional failure to supervise clergy.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

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Edward M. Goldenhersh, Bernard C. Huger, Kirsten M. Ahmad, St. Louis, MO, for Respondent.

Opinion

ROBERT G. DOWD, JR., Judge.

John Doe AP ("John Doe") appeals from the trial court's grant of summary judgment in favor of the Roman Catholic Archdiocese of St. Louis ("the Archdiocese"), Father Thomas Cooper ("Cooper"), and Archbishop Raymond Burke¹ ("Archbishop Burke"). John Doe contends the trial court erred in granting summary judgment in favor of the Archdiocese on his claim for intentional failure to supervise clergy because the trial court interpreted *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. banc 1997) incorrectly: (1) by including a premises requirement for the acts of sexual abuse, and (2) by finding the sexual abuse did not occur on premises. John Doe also argues the trial court erred in granting the Archdiocese's motion to dismiss his claims for negligent failure to supervise children because the trial court interpreted *Gibson*, incorrectly: (1) in finding negligence in the supervision of a child requires an examination of the standard of care of a priest, and (2) in finding the First Amendment barred judicial consideration of whether the Archdiocese complied with generally applicable tort rules that apply to all employers. We affirm.

John Doe was born on September 24, 1957. John Doe was a parishioner at a Catholic Church in St. Louis, Missouri, where Cooper was a Catholic priest. While John Doe attended the church, Cooper worked with, mentored, and counseled him. From approximately 1970 to 1971, when John Doe was still a minor, Cooper sexually abused him on two separate occasions. The acts of sexual abuse, which included oral sex and attempted anal sex, all occurred at Cooper's clubhouse on the Big River.

*590 The abuse caused John Doe to experience depression and emotional problems. However, John Doe never told anyone of his experience until he revealed it to his psychologist in 2002, at the age of 45.

John Doe filed his petition on June 22, 2005, which included the following counts: (I) child sexual abuse and/

or battery against all Defendants; (II) breach of fiduciary duty against all Defendants; (III) fiduciary fraud and conspiracy to commit fiduciary fraud against all Defendants; (IV) fraud and conspiracy to commit fraud against all Defendants; (V) intentional infliction of emotional distress against the Archdiocese and Archbishop Burke; (VI) intentional infliction of emotional distress against Cooper; (VII) negligence against all Defendants; (VIII) vicarious liability (respondeat superior) against the Archdiocese and Archbishop Burke; (IX) negligent supervision, retention, and failure to warn against the Archdiocese and Archbishop Burke; and (X) intentional failure to supervise clergy against the Archdiocese and Archbishop Burke.

The Archdiocese filed an answer and asserted Count X failed to state a claim upon which relief could be granted and was barred by the statute of limitations and laches. The Archdiocese also filed a motion to dismiss counts I, II, III, IV, V, VII, VIII, IX for failure to state a claim upon which relief can be granted. The trial court granted the Archdiocese's motion and dismissed counts I, II, III, IV, V, VII, VIII, and IX.

Defendant Cooper died on December 24, 2003, and John Doe dismissed without prejudice his claims against Defendant Cooper, which included counts I, II, III, IV, VI, and VII.

The Archdiocese also filed a motion for summary judgment on count X, John Doe's sole remaining claim of intentional failure to supervise clergy, arguing John Doe could not prove the alleged acts of sexual abuse occurred on property owned or controlled by the Archdiocese or while Cooper was using the Archdiocese's chattel. The Archdiocese also contended it was entitled to summary judgment because John Doe's claim was time-barred by the statute of limitations. John Doe filed a response, arguing the abuse included "seduction and grooming," which took place on church property prior to the sex acts themselves and that the statute of limitations was tolled until May of 2002 when John Doe's repressed memories of the abuse returned to him. John Doe contends as a result the Archdiocese was not entitled to summary judgment.

The trial court granted the Archdiocese' motion for summary judgment, finding John Doe could not prove the Archdiocese possessed the premises on which he was allegedly sexually abused by its priest. However, the trial court did not grant summary judgment on the basis of the statute of limitations, finding that different conclusions could be drawn from the evidence, and thus, it was a question for a jury. This appeal follows.

The propriety of summary judgment is purely an issue of law. *Meramec Valley R-III School Dist. v. City of Eureka*, 281 S.W.3d 827, 835 (Mo.App. E.D.2009). Accordingly, the standard of review on appeal regarding summary judgment is no different from that which should be employed by the trial court to determine the propriety of sustaining the motion initially. *Id.* Summary judgment is designed to permit the trial court to enter judgment, without delay, where the moving party has demonstrated its right to judgment as a matter of law. *Id.*

Our review of the grant of summary judgment is *de novo*. *Id.* Summary judgment is upheld on appeal if the movant is entitled to judgment as a matter of law and no genuine issues of material fact exist. *591 *Id.* The record is reviewed in the light most favorable to the party against whom judgment was entered, according that party all reasonable inferences that may be drawn from the record. *Meramec Valley R-III School Dist.*, 281 S.W.3d at 835. Facts contained in affidavits or otherwise in support of a party's motion are accepted as true unless contradicted by the non-moving party's response to the summary judgment motion. *Id.* A defending party may establish a right to judgment as a matter of law by showing any one of the following: (1) facts that negate any one of the elements of the claimant's cause of action; (2) the non-movant, after an adequate period of discovery, has not and will not be able to produce evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements; or (3) there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly-pleaded affirmative defense. *Id.* Once the movant has established a right to judgment as a matter of law, the non-movant must demonstrate that one or more of the material facts asserted by the movant as not in dispute is, in fact, genuinely disputed. *Id.* The non-moving party may not rely on mere allegations and denials of the pleadings, but must use affidavits, depositions, answers to interrogatories, or admissions on file to demonstrate the existence of a genuine issue for trial. *Id.*

Because John Doe's first two points concern the premises requirement of a claim for intentional failure to supervise clergy, we will address them together. In his first point, John Doe argues the trial court erred in granting summary judgment on his claim for intentional failure to supervise clergy because the trial court interpreted *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. banc 1997) incorrectly by including a premises requirement for the acts of sexual abuse. John Doe

contends an intentional failure to supervise clergy concerns the individual priest, not the premises. In his second point, John Doe argues the trial court erred in granting summary judgment on his claim for intentional failure to supervise clergy because the trial court interpreted *Gibson* incorrectly in finding the sexual abuse did not occur on premises in that the predicate acts of grooming took place on church property and were a pattern of the abuse and should not have been separately considered. We disagree.

In *Gibson*, the Supreme Court held a cause of action for intentional failure to supervise clergy is stated if (1) a supervisor exists (2) the supervisor knew that harm was certain or substantially certain to result, (3) the supervisor disregarded this known risk, (4) the supervisor's inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, section 317 are met. *Gibson*, 952 S.W.2d at 248. Section 317 of the Restatement (Second) of Torts provides:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

***592** The failure to meet one of these five elements is fatal to John Doe's claim for intentional failure to supervise.

The Archdiocese cites the fifth factor, which consists of a number of factors in Section 317 of the Restatement (Second) of Torts. In particular, Section 317 requires that the servant be upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or is using a chattel of the master. In this case, the Archdiocese

contends Cooper, the servant, was not on the premises of the Archdiocese and was not using its chattel when the abuse occurred.

John Doe maintains that allowing Cooper to take children off the Archdiocese's premises alone in the face of its knowledge that he had in the past engaged in sexual abuse with children is sufficient for liability to attach. John Doe contends the Archdiocese could have prevented Cooper from taking children on outings and trips, but it failed to do so and this failure to supervise occurred on its premises.

However, the elements of a claim for intentional failure to supervise are spelled out in *Gibson* as noted above and they include the incorporation of Section 317 Restatement (Second) of Torts. Thus, the Archdiocese was only under a duty to control Cooper when he was on its premises or when he was using its chattel. There is no evidence Cooper met either of these conditions when the abuse occurred.

In *Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575, 578 (Mo.App. W.D.2001), a minister filed a claim for, among other things, intentional failure to supervise clergy against the African Methodist Episcopal Church ("AMEC") after she was sexually harassed and groped by three church elders in the lobby of the church. AMEC contended it did not own the church where the groping occurred, but the court found AMEC clearly "possessed" the church and further that the elder in question was privileged to enter the property only as the servant of AMEC, the master. *Id.* at 583. Thus, the court found the plaintiff sufficiently satisfied the premises elements of Section 317. *Id.*

The court in *Weaver* also noted a master's duty under Section 317 is applicable only when the servant is acting outside the course and scope of his employment. *Id.* at 582. This may be because the servant is not performing the work of his employer at the time of the act or at the time he commits an intentional tort which, by definition, is not done in his role as the master's agent but rather solely for his own purposes. *Id.* The limitations expressed in Section 317(a)(i) are intended to restrict the master's liability for a servant's intentional acts outside the course and scope of employment to situations where either the master has some degree of control of the premises where the act occurred or where the master, because of the employment relationship, has placed the servant in a position to obtain access to some premises that are not controlled by the master. *Weaver*, 54 S.W.3d at 582. Such limitations serve to restrict the master's liability for a servant's

purely personal conduct which has no relationship to the servant's employment and the master's ability to control the servant's conduct or prevent harm. *Id.* at 582–83.

Further, comment b to Section 317 notes:

the master as such is under no peculiar duty to control the conduct of his servant while he is outside of the master's premises, unless the servant is at the time using a chattel entrusted to him as servant. Thus, a factory owner is required to exercise his authority as master to prevent his servants, while in the factory yard during the lunch hour, from indulging in games involving an unreasonable *593 risk of harm to persons outside the factory premises. He is not required, however, to exercise any control over the actions of his employees while on the public streets or in a neighboring restaurant during the lunch interval, even though the fact that they are his servants may give him the power to control their actions by threatening to dismiss them from his employment if they persist.

Restatement (Second) Torts, Section 317, comment b.

In a case from Pennsylvania somewhat similar to the instant case, a church was held liable for sexual assault under § 317 where the priest gained access to the teenage parishioner's hotel room for the purpose of providing counseling. *Hutchison v. Luddy*, 560 Pa. 51, 742 A.2d 1052, 1062 (1999).

Thus, the fifth element of a claim for intentional failure to supervise under Gibson requires John Doe to show the Archdiocese owned, controlled, had a right to occupy or control the location where the abuse occurred, or had some right to control the activity which occurs thereon. In this case, all of the sexual abuse occurred at Cooper's clubhouse. John Doe even states in his brief that oral sex, masturbation, and attempted anal sex occurred “off church property.” John Doe also testified nothing ever happened to him sexually at the parish school, in the church, in the rectory or the priest's living

room, and that the only two instances of sexual abuse occurred at the clubhouse. John Doe also testified his trips to the clubhouse were not sponsored by the parish and that unlike in *Hutchison*, when he was at the clubhouse he did not seek or receive religious training, mentoring, or counseling. Thus, John Doe admits the oral sex, masturbation, and attempted anal sex were not committed on premises possessed by the Archdiocese. We also note there is no evidence in the record showing the Archdiocese owned, controlled, had a right to occupy or control the clubhouse or anything that happened there.² As a result, John Doe fails to state an adequate claim for intentional failure to supervise.

However, John Doe argues Cooper, while on church property, engaged in “grooming” to set up a situation where the sexual abuse could happen. We note there is no evidence in the record that any sexual abuse occurred on church premises. The so-called “grooming” cited by John Doe does not qualify as sexual abuse, and, as such, does not satisfy the fifth requirement of a claim for intentional failure to supervise, which requires the sexual abuse to occur on property possessed by the church. John Doe contends the sexual abuse is inseparable from the grooming. We note first that the record is silent regarding specific acts of “grooming,” as differentiated from mere friendly behavior, that may have occurred on church property, but, in any case, it is undisputed that the sexualization of the relationship and the acts of abuse only occurred at the clubhouse. Further, we can find no authority that conflates so-called “grooming” with sexual abuse. Thus, we find the alleged “grooming” in this case does not suffice to meet the premises requirement *594 of a claim for intentional failure to supervise.

John Doe also argues the Archdiocese has a general duty to avoid creating an unreasonable and foreseeable risk of harm to its children. In support of his theory, John Doe relies on *Snowbarger v. Tri-County Electric Cooperative*, 793 S.W.2d 348, 350 (Mo. banc 1990), which involved an appeal by an employee's widow for benefits under the Workers Compensation Act where an employee, after working 86 hours in a 100.5 hour time period during an emergency created by an ice storm, fell asleep while driving and crashed into another vehicle, killing the employee. The Supreme Court held that the facts before it satisfied an exception to the requirement of Section 287.020.5 that workers be “engaged in or about the premises where their duties are being performed or where their services require their presence as a part of such service,” but did not address whether the employer had any duty to the woman injured when the employee collided with

her after falling asleep. *Id.* Thus, we do not find the case to be helpful to John Doe here.

John Doe also relies on *Berga v. Archway Kitchen and Bath, Inc.*, 926 S.W.2d 476, 477 (Mo.App. E.D.1996), which involved a negligence claim brought against an employer, where its employee was driving home after being exposed to noxious fumes at work and collided with plaintiff's son's car. In that case, the court found after analyzing Restatement (Second) of Torts Section 317 and *Snowbarger*, that the law did not support imposing a duty on employer. *Id.* at 482. Thus, the *Berga* case is not supportive of John Doe's argument here. In addition, it is distinguishable because it involved a negligent supervision case as opposed to an intentional failure to supervise claim. We can find no Missouri case supporting the imposition of a general duty to avoid creating an unreasonable and foreseeable risk of harm in an action for intentional failure to supervise.³

Therefore, we find the trial court did not err in granting summary judgment on John Doe's claim for intentional failure to supervise clergy. Point denied.

Because John Doe's third and fourth points both involve claims that are based on a theory of negligence, we will address them together. In his third point, John Doe argues the trial court erred in granting the Archdiocese's motion to dismiss his claims for negligent failure to supervise children because the trial court interpreted *Gibson* incorrectly in finding negligence in the supervision of a child requires an examination of the standard of care of a priest in that *Smith v. Archbishop of St. Louis*, 632 S.W.2d 516 (Mo.App.1982) and its progeny establish the Archdiocese owed a duty of care to John Doe commensurate with the foreseeable risks to which he was exposed. In his fourth point, John Doe argues the trial court erred in dismissing his negligence claims based on *Gibson* because neither the Free Exercise Clause nor the Establishment Clause of the First Amendment bars judicial consideration of whether the Archdiocese complied with *595 generally applicable tort rules that apply to all employers. We disagree.

Appellate review of a trial court's grant of a motion to dismiss is de novo. *Stahlman v. Mayberry*, 297 S.W.3d 113, 115 (Mo.App. E.D.2009). We accept as true all of the plaintiffs averments and view the allegations in the light most favorable to the plaintiff. *Id.* We review the petition in an almost academic manner to determine if the facts alleged meet the

elements of a recognized cause of action or of a cause that might be adopted in that case. *Id.*

John Doe filed two negligence claims: Count VII for general negligence and Count IX for negligent supervision, retention, and failure to warn. The latter claim involved only a negligent failure to supervise Cooper, not a negligent failure to supervise children, which is John Doe's claim in his third point. Therefore, because John Doe did not plead negligent failure to supervise children in Count IX, his argument with respect to Count IX is meritless.

In addition, while John Doe attempts to phrase his claim as a negligent failure to supervise children, his claim for general negligence in Count VII still involves the Archdiocese's negligence in failing to supervise Cooper. The Supreme Court has held questions of hiring, ordaining, and retaining clergy, necessarily involve interpretation of religious doctrine, policy, and administration, and such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment. *Gibson v. Brewer*, 952 S.W.2d 239, 246–47 (Mo. banc 1997). Further, adjudicating the reasonableness of a church's supervision of a cleric—what the church “should know”—requires inquiry into religious doctrine. *Id.* at 247. Thus, Missouri courts have declined to recognize a cause of action for negligent failure to supervise clergy.⁴ *Id.*

Although some federal courts⁵ diverge on the issue of whether the religion clauses in the First Amendment bar plaintiffs from asserting certain negligence claims against religious institutions, those decisions do not authoritatively compel us to revisit a First Amendment analysis already conducted by the Supreme Court of Missouri in *Gibson*. *Doe v. Roman Catholic Diocese of St. Louis*, 311 S.W.3d 818, 824 (Mo.App. E.D.2010). Such decisions merely inform us that other courts disagree as to the application of First Amendment law to the facts at bar. *Id.*

The holding in *Gibson*, which was that the First Amendment barred the assertion of tort claims against a religious institution based on its alleged negligence in supervising, retaining, or hiring sexually abusive clerics, has recently been reaffirmed as the controlling law in Missouri. See *Nicholson v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 825, 827 (Mo.App. E.D.2010) and *Doe*, 311 S.W.3d at 824. Until the Missouri Supreme Court or the United States Supreme Court declares differently, *Gibson* constitutes controlling law

in Missouri, law which we are bound to apply. *Doe*, 311 S.W.3d at 824.

The judgment of the trial court is affirmed.

Therefore, the trial court did not err in granting the Archdiocese's motion to dismiss *596 John Doe's claims for negligent failure to supervise. Point denied.

ROY L. RICHTER, P.J. and LUCY D. RAUCH, SP.J., concur.

All Citations

347 S.W.3d 588

Footnotes

- 1 Archbishop Burke was sued only in his representative capacity as Archbishop of the Archdiocese.
- 2 We note John Doe asserts "[t]he Archdiocese expects its priests to be on duty 24/7." However, in finding the Archdiocese's insurance policy did not provide coverage for injuries a police officer sustained while trying to remove a priest from a protest at an abortion clinic, the court noted the fact that the priest was a priest 24 hours a day does not make the Archdiocese responsible for all his activities, and does not make any and all of the activities and actions of the priest within the scope of his respective duties. *Maryland Cas. Co. v. Huger*, 728 S.W.2d 574, 582 (Mo.App. E.D.1987)
- 3 The cases John Doe relies on from other jurisdictions, namely *Robertson v. LeMaster*, 171 W.Va. 607, 301 S.E.2d 563 (1983), *Faverty v. McDonald's Restaurants of Oregon, Inc.*, 133 Or.App. 514, 892 P.2d 703 (1995), and *Fazzolari v. Portland School Dist. No. 1J*, 303 Or. 1, 734 P.2d 1326 (1987), all rely on a theory of negligent supervision. In *Gibson*, the court found applying a negligence standard to the actions of a Diocese in dealing with its parishioners offended the First Amendment. 952 S.W.2d at 248. Thus, we cannot impose a duty under a theory of negligence here, and we can find no case involving an intentional failure to supervise that has relied on the imposition of a general duty to avoid creating an unreasonable and foreseeable risk of harm.
- 4 John Doe relies on *Smith, By and Through Smith v. Archbishop of St. Louis* on behalf of Archdiocese of St. Louis, (Mo.App.E.D.1982). While that case involved negligent supervision, it did not involve negligent supervision of a member of the clergy, and thus, it did not involve any First Amendment entanglement. The current case is distinguishable because the negligent supervision claim involves the Archdiocese's supervision of one of its priests, which implicates the First Amendment as discussed above.
- 5 See *Mary Doe SD v. The Salvation Army*, 2007 WL 2757119 (E.D.Mo.2007) and *Perry v. Johnston*, 641 F.3d 953 (8th Cir.2011).

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419 S.W.3d 143
Missouri Court of Appeals,
Western District.

D.T., Appellant,
v.

CATHOLIC DIOCESE OF KANSAS
CITY–ST. JOSEPH, et al., Respondents.

No. WD 76025.

|
Nov. 12, 2013.

|
Motion for Rehearing and/or Transfer
to Supreme Court Denied Dec. 24, 2013.

|
Application for Transfer Denied Feb. 25, 2014.

Synopsis

Background: Parishioner filed a negligence complaint against Catholic Diocese, bishop, and priest after he was allegedly sexually molested by priest when he was a minor. The Circuit Court of Jackson County, Peggy Stevens McGraw, J., dismissed the case. Parishioner appealed.

Holdings: The Court of Appeals, Mark D. Pfeiffer, P.J., held that:

parishioner's claims against Catholic Dioceses for negligent infliction of emotional distress and negligent supervision/retention of priest required inquiry into religious doctrine, creating excessive entanglement, inhibiting religion, and resulting in endorsement of one model of supervision, in violation of the First Amendment, and

priest's mother's house and hotel room, both places where priest allegedly sexually abused parishioner, could not be considered Diocese property, for the purpose of parishioner's failure to supervise claims against Catholic Diocese.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

Attorneys and Law Firms

*144 Rebecca M. Randles, Sarah A. Brown, and Dan Curry, Kansas City, MO, for Appellant.

*145 Jonathan R. Haden, Mara H. Cohara, and Chad E. Blomberg, Kansas City, MO, for Respondents.

Before Division II: MARK D. PFEIFFER, Presiding Judge, and JOSEPH M. ELLIS and VICTOR C. HOWARD, Judges.

Opinion

MARK D. PFEIFFER, Presiding Judge.

The question presented in this appeal is whether the supervisory hierarchy of a religious organization is to be treated differently under the law when it knows that sexual predator-related harm is certain or substantially certain to occur to child parishioners by a member of the clergy it supervises, but in one instance the harm happens to be perpetrated on church property, and in the other instance the harm happens to be perpetrated off of church property. Pursuant to controlling Missouri Supreme Court precedent, the answer appears to be “yes.”

D.T.¹ appeals the judgment of the Circuit Court of Jackson County, Missouri (“trial court”), dismissing his cause of action against Respondents the Catholic Diocese of Kansas City–St. Joseph and Bishop Robert W. Finn (collectively, “the Diocese”) and Father Michael Tierney (“Tierney”).² On appeal, D.T. challenges the dismissal of three negligence-based counts and one count of intentional failure to supervise clergy against the Diocese.

Standard of Review

This case was decided on motions to dismiss, prior to answer and discovery. Thus, we take as true all facts alleged in D.T.'s petition that was before the trial court. *Sullivan v. Carlisle*, 851 S.W.2d 510, 512 (Mo. banc 1993). “Review of dismissal of a petition allows pleadings their broadest intendment, treats all facts alleged as true, construes all allegations favorably to plaintiff, and determines whether averments invoke principles of substantive law.” *Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo. banc 1997).³ We review the grant of a trial court's motion to dismiss *de novo*. *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008).

Factual and Procedural Background

Years ago, Father Tierney was placed at the St. Elizabeth's parish in Kansas City by the Diocese to serve as clergy for the St. Elizabeth's parish. D.T. alleges that the Diocese knew that Tierney had sexually molested other child parishioners in the past and, given his ongoing sexual proclivities, knew that it was certain or substantially certain that he would molest other children he would come into contact with. While at St. Elizabeth's parish, he came into contact with child parishioner D.T.

*146 D.T. grew up in St. Elizabeth's parish in Kansas City. He attended St. Elizabeth's school and served mass as an altar boy at the church, often with Father Tierney. Through the course of D.T.'s time at St. Elizabeth's, Tierney befriended D.T. and his family; Tierney would often approach D.T. at school, place a hand on D.T.'s shoulder, and ask about his family. Tierney began asking D.T. to help him with special projects both inside and outside the parish. One time, for example, Tierney asked D.T. to assist him with an audio-visual presentation at St. Teresa's. Tierney would give D.T. extra attention and would occasionally take him out to eat.

On two occasions in the early 1970's, when D.T. was approximately twelve years old, Father Tierney sexually molested D.T. On each occasion, the sexual molestation was not incident to any parish-related activities. Likewise, on each occasion, the sexual molestation occurred off church property: once in the basement of Tierney's mother's home and another time at a hotel.

D.T. never told anyone what had happened between himself and Father Tierney until June of 2011, when he learned that other boys had accused Tierney of molesting them. D.T. claims that he had repressed or suppressed the memories of his own abuse until that time, and he still does not have a full memory of what occurred, although he is undergoing a process to attempt to recover the memories.

In July of 2011, D.T. sued both Tierney and the Diocese. Both Tierney and the Diocese filed motions to dismiss, claiming that D.T.'s action was barred by the applicable statutes of limitations and also that his petition failed to state a claim upon which relief could be granted. Because D.T. alleged suppressed or repressed memories, the trial court, citing *Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d

576, 584 (Mo. banc 2006), refused to dismiss most of the counts on statute-of-limitations grounds. The trial court did, however, grant the Diocese's motion to dismiss all counts for failure to state a claim and, similarly, dismissed all but two counts against Tierney. D.T. then voluntarily dismissed, without prejudice, the two remaining counts against Tierney. D.T. timely appealed.

Analysis

The Seminal Case: Gibson v. Brewer

In *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. banc 1997), our Supreme Court analyzed a similar fact pattern in which a minor child parishioner alleged sexual abuse by a member of the Diocese's clergy and, in so doing, asserted negligence and intentional torts against the Diocese. In *Gibson*, our Supreme Court analyzed the parameters upon which negligence and intentional torts may or may not be properly asserted against a religious organization for the conduct of its clergy.

With regard to the difference between negligence-based torts against the Diocese versus intentional torts, the *Gibson* court expressed the following neutrality guideline:

Religious organizations are not immune from civil liability for the acts of their clergy. If neutral principles of law can be applied without determining questions of religious doctrine, polity, and practice, then a court may impose liability.

Id. at 246 (citation omitted).

The *Gibson* court then addressed the type of negligence claims that were asserted against the Diocese: negligent hiring; negligent ordination; negligent retention; negligent supervision; negligent infliction of emotional distress; and other independent claims of negligence against the Diocese *147 related to its relationship as "master" to its "servant" members of the clergy. In rejecting each of these negligence claims, the *Gibson* court explained:

Questions of hiring, ordaining, and retaining clergy, however, necessarily involve interpretations of religious doctrine, policy and administration. Such excessive entanglement between church and state has the effect of inhibiting religion, in violation of the First Amendment.

Id. at 246–47 (internal citations omitted).

Adjudicating the reasonableness of a church's supervision of a cleric—what the church “should know”—requires inquiry into religious doctrine.... [T]his would create an excessive entanglement, inhibit religion, and result in the endorsement of one model of supervision.

Id. at 247 (internal citations omitted).

Whether negligence exists in a particular situation depends on whether or not a reasonably prudent person would have anticipated danger and provided against it. In order to determine how a “reasonably prudent Diocese” would act, a court would have to excessively entangle itself in religious doctrine, policy, and administration.

Id. at 249–50 (internal citation omitted).

Conversely, the *Gibson* court reasoned that “[r]eligious conduct intended or certain to cause harm need not be tolerated under the First Amendment.” *Id.* at 248 (citing *Cantwell v. Connecticut*, 310 U.S. 296, 308, 60 S.Ct. 900, 905, 84 L.Ed. 1213 (1940)). With that backdrop, the Supreme

Court outlined the elements of a cause of action for intentional failure to supervise clergy:

A cause of action for intentional failure to supervise clergy is stated if (1) a supervisor (or supervisors) exists (2) the supervisor (or supervisors) knew that harm was certain or substantially certain to result, (3) the supervisor (or supervisors) disregarded this known risk, (4) the supervisor's inaction caused damage, and (5) *the other requirements of the Restatement (Second) of Torts, section 317 are met.*

Id. at 248 (emphasis added).

Section 317 of the RESTATEMENT (SECOND) OF TORTS (1965) states that a master has a duty to control his servant while the servant is acting outside the scope of employment and prevent him from intentionally harming others if:

(a) the servant

(i) is upon the *premises in possession of the master* or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) the master

(i) knows⁴ ... that he has the ability to control his servant, and

(ii) knows ... of the necessity and opportunity for exercising such control.

(Emphasis added.)

Missouri's Constitution expressly states that the Missouri Supreme Court *148 “shall be the highest court in the state” and that its “decisions shall be controlling in all other courts.” Mo. Const. art. V, § 2. Thus, this court is “constitutionally bound to follow the most recent controlling decision of the Missouri Supreme Court.” *Independence–Nat'l Educ. Ass'n v. Independence Sch. Dist.*, 162 S.W.3d 18, 21 (Mo.App.W.D.2005) (internal quotation omitted). For cases dealing with sexual abuse by members of clergy, the

most recent Missouri Supreme Court decision is *Gibson*. Under the lens of *Gibson*, then, we analyze D.T.'s present claims of error as they relate to the trial court's dismissal of the negligent and intentional torts he has alleged against the Diocese.

Negligence Counts

D.T.'s fourth, fifth, and sixth points on appeal are that the trial court erred in dismissing his negligence counts against the Diocese: negligent infliction of emotional distress; negligent supervision/retention [of Father Tierney]; and negligent failure to supervise children. D.T. argues that the trial court read *Gibson* too broadly in this respect, effectively concluding that *Gibson* barred all negligence actions against religious organizations on First Amendment grounds. While we agree with D.T. that *Gibson* does not bar all conceivable negligence actions against religious organizations,⁵ we also agree with the trial court that *Gibson* bars D.T.'s negligence-based claims against the Diocese in this action.

First, with regard to D.T.'s claims of negligent infliction of emotional distress and negligent supervision/retention as those claims relate to the Diocese's master-servant relationship with a member of its clergy, *Gibson* has already reviewed these identical claims and rejected them for the reasons previously detailed in our discussion of *Gibson*. We will not, thus, revisit those identical negligence-based claims in this appeal.

D.T. alternatively argues that *Gibson* did not prohibit the trial court, nor should it prohibit this court, from deciding his claim against the Diocese for negligent failure to supervise—not clergy—but *children* in its care. As support, D.T. cites *Smith v. Archbishop of St. Louis*, 632 S.W.2d 516 (Mo.App.E.D.1982). In *Smith*, a young girl who was badly burned by a lighted candle on her second-grade teacher's desk at a Catholic school successfully sued the Diocese that ran the school. D.T. takes from this that he should have been allowed to show that the defendant Diocese in this case failed to use ordinary care in his supervision. We disagree for several reasons.

First, as the Eastern District of this court found significant in *Doe v. Roman Catholic Archdiocese of St. Louis*, 347 S.W.3d 588 (Mo.App.E.D.2011) (“*Doe II*”), the negligent actor in *Smith* was not a clergy member but was a lay teacher, who failed to use an ordinary degree of care in supervising her students. See *Doe II*, 347 S.W.3d at 595 n. 4; *Smith*, 632

S.W.2d at 522. By contrast, in this case, D.T.'s claim that the Diocese negligently failed to properly supervise D.T. (the student) is inextricably tied to his claim that the Diocese should have kept Tierney away from *all* children, and *Gibson*, as noted above, refuses to apply a negligence standard to matters involving a religious organization's supervision of its clergy.

*149 Second, *Gibson*, which post-dates *Smith*, also states that “[a]pplying a negligence standard to the actions of the Diocese in dealing with its *parishioners* offends the First Amendment.” 952 S.W.2d at 249 (emphasis added).⁶ D.T. urges this court to reconsider this policy, arguing that whether the Diocese failed to properly supervise its children, including D.T., could be decided using only neutral principles of law of general applicability, which would not run afoul of the First Amendment. D.T.'s leading case authority in this assertion is *A.R.H. v. W.H.S.*, 876 S.W.2d 687, 690 (Mo.App.E.D.1994). In *A.R.H.*, a grandmother was sued by her granddaughter for the sexual abuse she suffered at the hands of the grandmother's husband. *Id.* at 689. The court held that, while the grandmother did not have to breach her marital duties to her husband by, for example, warning the children or their mother of her husband's proclivities, she likely

could have prevented further abuse either by taking steps to ensure that [the granddaughter] remained with her or within her view at all times when she was in her custody or by declining to accept custody and supervision of the children in her home. Neither of these two alternatives would require Grandmother to compromise her duty of loyalty to her husband.

Id. at 690.

We find *A.R.H.* distinguishable as there is a significant factual difference between *A.R.H.* and D.T.'s case. That is, while *A.R.H.* noted that the grandmother could have protected the granddaughter by simply not letting her out of her sight, the Diocese cannot realistically monitor all parish children constantly, whether in or out of school, to make sure that they are not alone with priests who have been accused of abuse. For the Diocese to effectively keep children out of harm's way, it would have to approach the problem from the side of supervising *Tierney's* actions;⁷ we conclude that *Gibson*, which is binding on this court, precludes this course of action, at least under a negligence standard. The Eastern District of this court has agreed, stating:

Although some federal courts diverge on the issue of whether the religion clauses in the First Amendment bar plaintiffs from asserting certain negligence claims against religious institutions, those decisions do not authoritatively compel us to revisit a First Amendment analysis already conducted by the Supreme Court of Missouri in *Gibson*. Such decisions merely inform us that other courts disagree as to the application of the First Amendment to the facts at bar.

Doe II, 347 S.W.3d at 595 (footnote omitted) (citation omitted). *Doe v. Roman Catholic Archdiocese of St. Louis*, 311 S.W.3d 818 (Mo.App.E.D.2010) (“*Doe I*”) and *Doe II*, which involved much the same argument from the same appellate counsel as appears before this court, both interpreted *Gibson* to bar all negligence claims against the Diocese resulting from the sexual abuse of a minor parishioner by a *150 priest.⁸ The trial court did not err in dismissing D.T.’s claim for negligent failure to supervise children.

Points IV, V, and VI are denied.

Intentional Failure to Supervise Clergy

D.T.’s first three points on appeal all challenge the trial court’s dismissal of his claim against the Diocese for intentional failure to supervise clergy, but on different grounds. Although the arguments for each point are distinct, the differences are subtle, and the arguments tend to overlap. Each of the points alleges that the trial court wrongly interpreted *Gibson v. Brewer* in this respect too narrowly, thereby dismissing D.T.’s claim because the acts of sexual abuse did not occur on the premises of the Diocese.

As previously noted, the *Gibson* court concluded that the Diocese, as an employer, could be liable for the torts of its employee priests, even when the priest was acting *outside* of the scope of his employment (i.e., sexual misconduct), if there was a nexus upon which it was fair to hold the Diocese liable. The *Gibson* court found that nexus when the priest was “upon the premises in possession of the [Diocese] or upon which the [priest] is privileged to enter only as [its] servant, or ... is using a chattel of the [Diocese]” when he committed the tortious acts in question, tortious acts that the Diocese’s supervisory hierarchy knew were certain to occur or were substantially certain to occur. 952 S.W.2d at 247.

If the employee is acting outside of the course and scope of his employment—and he is when he commits an intentional tort—it makes sense to limit the duty to supervise to situations where it would still be fair to hold the employer responsible for the employee’s actions such as when the employee is on the employer’s premises or is using its chattel. *See Doe II*, 347 S.W.3d at 592 (“Such limitations serve to restrict the master’s liability for a servant’s purely personal conduct which has no relationship to the servant’s employment and the master’s ability to control the servant’s conduct or prevent harm.”).

Tierney’s alleged acts of abusing D.T. occurred while they were at Tierney’s mother’s house and while they were in a hotel room. The Diocese did not own or have possessory control over either of these locations, and Tierney was not allowed access to the locations solely because of his status as a priest. *Cf. Weaver v. African Methodist Episcopal Church, Inc.*, 54 S.W.3d 575, 583 (Mo.App.W.D.2001) (while church did not own the building where sexual harassment occurred, it “possessed” the building for an authorized church function, and the offending church elder was privileged to enter the building only as the servant of the church, so church was liable for elder’s actions). Tierney would presumably be welcome at his mother’s house regardless of his occupation, and similarly he could rent a hotel room absent his status as a priest.⁹

*151 D.T.’s first point argues that Tierney’s mother’s house and the hotel room should be considered Diocese property for purposes of *Gibson* analysis because D.T.’s presence at these locations occurred only because D.T. and his family trusted Tierney as a priest. However, in a virtually identical factual scenario, the Eastern District, in *Doe II*, refused to hold the Diocese liable when all of the abusive acts occurred at the priest’s private clubhouse. 347 S.W.3d at 593. Because we similarly conclude that neither Tierney’s mother’s house nor the hotel may be considered property possessed by the Diocese or property upon which Tierney was privileged to enter only because of his status as a priest with the Diocese, D.T.’s first point is denied.

D.T.’s second point on appeal also challenges the dismissal of his claim for intentional failure to supervise clergy and alleges that because the “grooming” activity, whereby Tierney befriended D.T., obtained his trust, and “seduced” him, was conducted primarily on the premises of the Diocese, he satisfies the premises requirement of RESTATEMENT (SECOND) OF TORTS section 317.

D.T.'s counsel made the identical argument unsuccessfully to the Eastern District of this court in *Doe II*, 347 S.W.3d at 593–94. The *Doe II* opinion noted that, in that case, none of the “grooming” activities that occurred on church property constituted sexual abuse or were anything other than “friendly behavior.” *Id.* at 593. Similarly, here, Tierney “befriended” D.T. and his family; would approach D.T. at school, put a hand on his shoulder, and ask how his family was doing; would ask D.T. to help him with audio-visual presentations on Diocese property outside of St. Elizabeth's; and, sometimes Tierney would take D.T. out to eat. Absent the subsequent alleged sexual abuse, none of this conduct would be objectionable.

D.T. cites three Missouri cases for his proposition that “‘grooming’ allows a predator to normalize sexuality for a young child.” *Berg v. State (In re the Care & Treatment of Berg)*, 342 S.W.3d 374 (Mo.App.S.D.2011); *Martineau v. State*, 242 S.W.3d 456 (Mo.App.S.D.2007). Both cases mention grooming, but otherwise are inapplicable. The third case D.T. cites, *State v. Naasz*, 142 S.W.3d 869 (Mo.App.S.D.2004), discusses extensively the grooming of the victim, but does so to refute the abuser's assertion that the victim had consented to the sexual relations with her father. None of the cases cited by D.T. in any way supports his claim in Point II that the “grooming” activities, which were otherwise innocent and some of which occurred on property belonging to the Diocese, are inseparable from the ultimate acts of sexual abuse that Tierney committed off of Diocese-controlled property, thus causing the Diocese to be liable for intentional failure to supervise clergy under section 317 of the RESTATEMENT (SECOND) OF TORTS and *Gibson v. Brewer*. Point II is denied.

***152** D.T.'s third point on appeal alleges that the trial court improperly dismissed his claim for intentional failure to supervise clergy in that it wrongly interpreted *Gibson* to hold that section 317 of the RESTATEMENT (SECOND) OF TORTS is the *only* mechanism available for finding an employer responsible for the torts of its employee that were committed outside of the scope of the employee's employment. In *Gibson*, as stated earlier, the Missouri Supreme Court held that, although the First Amendment barred negligence-based claims against a religious organization for sexual abuse conducted by one of its clergy, the plaintiff could bring a claim for *intentional* failure to supervise clergy. *Gibson*, 952 S.W.2d at 247–48. *Gibson* permitted the claim against the Diocese as employer, even though the intentional tort committed by the priest was outside of the scope of his employment, noting that

the RESTATEMENT (SECOND) OF TORTS, section 317 provided for employer liability where the tort was committed “upon the premises in possession of the master.” *Id.* at 247. It made sense for *Gibson* to rely upon section 317, because in *Gibson*, the tortious acts of the priest did, in fact, occur on property belonging to the master, the Diocese.

Of note, however, immediately after declaring the elements of a cause of action for intentional failure to supervise clergy, which included specific reference to meeting “the other requirements of the Restatement (Second) of Torts, section 317,” the Supreme Court summarized the basis for the Diocese's liability to its parishioner for the intentional tort of its cleric:

Here, giving the allegations of the petition their broadest intendment, the [plaintiffs] have alleged that the Diocese knew that harm was certain or substantially certain to result from its failure to supervise [its cleric], and thus have stated a cause of action for intentional failure to supervise clergy.

Gibson, 952 S.W.2d at 248.

This summary statement is silent about *where* the harm occurred and, instead, is focused on the knowledge by the Diocese that the harm was certain to occur or substantially certain to occur. Aside from the fact that the *Gibson* court's liability summarization under the theory of intentional failure to supervise clergy is more akin to the American Law Institute's more recent pronouncement of the Restatements (Third) of both Agency and Torts, this liability summarization lends a degree of credence to D.T.'s argument that other alternative mechanisms found in the Restatements of the law of Torts or Agency may support this intentional tort.

D.T. offers as other such mechanisms sections 314A and 315 of the RESTATEMENT (SECOND) OF TORTS.... While the Diocese counters that these sections are “negligence provisions” and, therefore, could not possibly support a claim for intentional failure to supervise clergy, we note that section 317, on which *Gibson* did rely, is also stated in terms applicable to negligence actions: “A master is under a duty to exercise *reasonable care* so to control his servant while acting outside the scope of his employment....” Clearly

the Supreme Court borrowed a basis for employer liability from a provision applying to negligence actions (section 317) but then superimposed an intent element. Accordingly, the negligence aspect of sections 314A and 315 does not defeat their use. Instead, we note simply that neither of these sections expressly refers to master/servant relationships, instead, basing liability on other special relationships among the parties. We conclude that sections 314A and 315 are not relevant in this case.

***153** D.T. offers another such liability-triggering mechanism in the RESTATEMENT (SECOND) OF AGENCY, section 219 (1958), and, indeed, that section expressly pertains to liability of the master for the torts of its servant. Section 219 states that the master is liable for the torts of its servant when, *inter alia*, the master *intends* the tortious conduct or consequences or when the servant acts with the apparent authority of the master. D.T. argues that the Diocese, as master, intended the consequences of Tierney's conduct toward D.T. because, having been made aware of Tierney's propensities toward children, it knew that the consequences were "substantially certain" to occur.

The Diocese only addresses section 219 of the RESTATEMENT (SECOND) OF AGENCY briefly, dismissing the possibility that it "would somehow make the Diocese liable for Tierney's acts regardless of the premises requirements in Restatement (Second) of Torts [section] 317." Yet section 219 of the RESTATEMENT (SECOND) OF AGENCY expressly applies to employer liability for an employee's tort falling outside of the scope of employment and conspicuously lacks any mention of either section 317 of the RESTATEMENT (SECOND) OF TORTS or any "premises requirements."

More notable is that, subsequent to the *Gibson* decision, the RESTATEMENT (SECOND) OF AGENCY has been superseded by the RESTATEMENT (THIRD) OF AGENCY (2006) and, as to torts involving physical and emotional harm, the RESTATEMENT (SECOND) OF TORTS has been superseded by the RESTATEMENT (THIRD) OF TORTS (2012).

In the Foreword of volume 2 of the RESTATEMENT (THIRD) OF TORTS (2012), the American Law Institute said, in pertinent part:

With the publication of this volume, the American Law Institute proudly completes Restatement Third of Torts: Liability for Physical and Emotional Harm.... For today, the two volumes [of Restatement (Third) of Torts] now in print restate the core of American tort law.

Id. at XIII. In fact, in 2009, the first of the two volumes of RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM, was published by the American Law Institute, and at that time, the Foreword for the first volume noted that the law of liability for intentional physical harm was restated in the first volume and that the RESTATEMENT (THIRD) OF TORTS in the intentional physical harm area "explains the ideas we hold about social duty and responsibility early in the 21st century." *Id.* at XII. Noticeably silent from the RESTATEMENT (THIRD) OF TORTS is any section similar to section 317 requiring that the servant's intentionally harmful act occurs "upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant."

Instead, section 7.05 of the RESTATEMENT (THIRD) OF AGENCY and the comments that follow it are the most relevant to the factual scenario of the present appeal. As with section 317 of the RESTATEMENT (SECOND) OF TORTS, section 7.05 of the RESTATEMENT (THIRD) OF AGENCY expressly deals with negligence actions. The comments and the cases cited in the annotations, however, indicate that this section, along with section 41 of the RESTATEMENT (THIRD) OF TORTS, LIABILITY FOR PHYSICAL AND EMOTIONAL HARM (2012),¹⁰ contemplates at least the ***154** possibility of employer liability in situations factually similar, if not identical, to the case before this court today. And using *Gibson* as a reference, there is no reason that these provisions could not also be applied to the tort of *intentional* failure to supervise clergy. Section 7.05 of the RESTATEMENT (THIRD) OF AGENCY states:

(1) A principal who conducts an activity through an agent is subject to liability for harm to a third party caused by the agent's conduct if the harm was caused by the principal's

negligence [or, by extension, intentional acts or omissions] in ... supervising, or otherwise controlling an agent.

(2) When a principal has a special relationship with another person, the principal owes that person a duty of reasonable care with regard to risks arising out of the relationship, including the risk that agents of the principal will harm the person with whom the principal has such a special relationship.

The comments following section 7.05 mention that “an employer may be subject to liability under this rule for injury caused by tortious conduct of an employee action outside the scope of employment.” RESTATEMENT (THIRD) OF AGENCY § 7.05 cmt. b. Yet section 7.05 makes no mention of the “requirement” that the tortious conduct of the employee occur upon the premises in possession of the employer. Instead, while section 7.05 requires “some nexus or causal connection between the principal’s negligence [or intentional actions or omissions] in selecting or controlling an actor, the actor’s employment or work, and the harm suffered by the third party,” *id.* at cmt. c, the comments following section 7.05 of the RESTATEMENT (THIRD) OF AGENCY make clear that the *focus* of whether the employer should be held liable for the intentional torts of its employees is the foreseeability of the harm that occurs and the employer’s ability to control the conduct of the employee. *Id.* at cmt. d.

The Diocese acknowledges the importance of the employer’s ability to control the employee and cites *Hills v. Bridgeview Little League Association*, 195 Ill.2d 210, 253 Ill.Dec. 632, 745 N.E.2d 1166 (2000), to support its case. However, we read *Hills* to favor D.T.’s interpretation of the law on this issue and not that of the Diocese. Like the Missouri Supreme Court did in *Gibson*, the Illinois Supreme Court, in *Hills*, uses section 317 of the RESTATEMENT (SECOND) OF TORTS to analyze whether a master (in this case, a little league baseball club acting through the head coach) should be held liable for the intentional torts (assault and battery) of its servants (assistant coaches). *Id.*, 253 Ill.Dec. 632, 745 N.E.2d at 1179. But unlike in *Gibson* or either of the *Doe* cases in Missouri, the analysis in *Hills* did not end with whether the tortious acts occurred on the premises of the master. In fact, in *Hills*, it was conceded that the master (the little league club) did occupy or possess the premises for purposes of section 317. *Id.*, 253 Ill.Dec. 632, 745 N.E.2d at 1183.

Instead, *Hills* contains a great deal of analysis of the foreseeability¹¹ of the tortious *155 conduct of the assistant coaches and the club’s ability to control the assistant coaches’

actions. The opinion stresses that “because no one from [the club] was aware of any violent propensities on the part of [the assistant coach], there is no means by which [the club] could have known of the need to control [the assistant coach].” *Id.*, 253 Ill.Dec. 632, 745 N.E.2d at 1182 n. 3. By contrast, D.T. has alleged that the Diocese “had actual notice that ... Tierney had a propensity to engage in improper and sexualized touching of children through actual reports to employees of the Diocese at or before the events in question, through institutional knowledge and through information gleaned through conversation with the children in the care of the Diocese.”

After discussing foreseeability, the *Hills* opinion goes on to state how, as unpaid volunteers, the assistant coaches were likely performing their duties for their own reasons and were, therefore, not likely to be readily subject to *control* by the master (the club). *Id.*, 253 Ill.Dec. 632, 745 N.E.2d at 1185. For example, the club could not control the assistant coaches by threatening to discipline or fire them, and no other plausible means of control had been suggested. The Diocese argues that, similarly, it had no way of controlling Father Tierney when he was not on church property. This argument flies in the face of the nature of a priest’s relationship to, and supervision by, his Diocese. A Diocese enjoys a unique control over its employees—it tells its priests where they will live and with whom. It tells them where they will work, and what work specifically the priests will perform within the parish. It would be difficult to imagine what employer could have any more control over its employees, even when “off duty,” than a Catholic Diocese. In sum, *Hills* is in no way similar to this case with respect to the master’s ability to control the servant, and, for that reason, *Hills* does not support the Diocese’s position; in fact, it supports D.T.’s position. D.T. has alleged facts showing that the Diocese both knew that harm was certain or substantially certain to result, and that the Diocese had the ability to control the employee priest to prevent D.T.’s abuse but intentionally refused to do so.

Yet in *Gibson*, our Supreme Court did not announce the elements of intentional failure to supervise clergy, particularly the element incorporating by reference the section 317 requirements from the RESTATEMENT (SECOND) OF TORTS, as “flexible” elements. The elements were declared by the Supreme Court as mandatory elements. *Gibson*, 952 S.W.2d at 248 (“A cause of action for intentional failure to supervise clergy is stated *if* [each element has been alleged].”) (emphasis added). And, as stated previously, one of the “requirements” of section 317 is that the servant

[i]s upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or ... is using a chattel of the master.

Here, simply put, this section 317 “requirement” has not been met. The servant's (i.e., Tierney's) harm perpetrated upon D.T. occurred on premises that were *156 not in possession of the master (i.e., the Diocese) or upon which Tierney was privileged to enter only as the Diocese's servant; likewise, Tierney has not been alleged by D.T. to have used a chattel of the Diocese at the time of perpetrating harm upon D.T. As the Eastern District of this court stated in *Doe II* under a similar fact pattern:

[T]he elements of a claim for intentional failure to supervise are spelled out in *Gibson* as noted above and they include the incorporation of Section 317 Restatement (Second) of Torts. Thus, the Archdiocese was only under a duty to control [its cleric] when he was on its premises or when he was using its chattel. There is no evidence [the Archdiocese's cleric] met either of these conditions when the abuse occurred.

....

... As a result, [the plaintiff] fails to state an adequate claim for intentional failure to supervise.

Doe II, 347 S.W.3d at 592–93.

Taken to its extreme, then, a religious organization could be fully cognizant that a member of its clergy, when placed near children, is certain or substantially certain to sexually molest children; but as long as it counsels its clergy to take their personal criminal proclivities to premises not owned, possessed, or controlled by the church and not to use a chattel of the church in the commission of the harmful and often criminal actions, there could be no civil liability for intentional failure to supervise.

That result seems to contradict the spirit and intent of the intentional tort recognized and announced by the *Gibson*

court. Yet as the precedent of *Gibson* is worded, we are not inclined to disagree with our sister court from the Eastern District in *Doe II*. Simply put, our Supreme Court has announced a very specific number of elements that must be satisfied in order to establish the tort of intentional failure to supervise clergy. Pursuant to the mandate of the Missouri Constitution, once the elements of this cause of action have been announced by the Missouri Supreme Court, only that court may modify the elements.¹²

Perhaps this is a case that our Supreme Court may wish to accept on transfer to clarify application of the elements of the tort of intentional failure to supervise clergy that it previously announced in *Gibson*, particularly in light of the fact that both the Restatements (Second) of Agency and Torts have been revised since *Gibson* was decided. Since the *Gibson* court found persuasive an application of the RESTATEMENT (SECOND) OF TORTS as an element of the tort of intentional failure to supervise clergy, perhaps the Supreme Court will find it equally persuasive that the authors of the RESTATEMENT (THIRD) OF TORTS have consciously chosen to remove any provision similar to section 317 of the RESTATEMENT (SECOND) OF TORTS in their pronouncement of the RESTATEMENT (THIRD) OF TORTS. Given the constraints of the Missouri Constitution, however, this court is not at liberty to modify the elements of the tort of intentional failure to supervise clergy, and instead, we must leave that matter to the discretion of our Supreme Court.

Point III is denied.

*157 Conclusion

For the above-stated reasons, we affirm the trial court's judgment dismissing D.T.'s lawsuit against the Diocese and Bishop Finn.

JOSEPH M. ELLIS and VICTOR C. HOWARD, Judges, concur.

All Citations

419 S.W.3d 143

Footnotes

- 1 Initials for the appellant are being used pursuant to section 566.226 RSMo because the appellant alleges that he is a victim of sexual assault and, as such, our ruling endeavors to protect his identity.
- 2 The trial court actually dismissed all but two counts against Tierney. However, D.T. subsequently dismissed, without prejudice, those remaining counts against Tierney. None of D.T.'s points on appeal alleges error as to the trial court's dismissal of any counts relating to Tierney. Thus, because all points on appeal apply only to Respondents Diocese and Bishop Finn, Respondent Tierney moved this court for his dismissal from this appeal without objection from D.T.; we granted the motion, dismissing Tierney from this appeal.
- 3 Acknowledging this precedent, the Diocese states in its brief, "The Diocese vehemently denies [D.T.'s] allegations that it had notice or knowledge of alleged sexual abuse by Tierney, but recognizes that the Court accepts [D.T.'s] pleaded facts as true for purposes of this appeal." Resp. Br. 2.
- 4 Any analysis of section 317 is limited to whether the religious organization intentionally (rather than negligently) failed to supervise clergy. The alternate variations of section 317 based in negligence (i.e., "reason to know") cannot be used to support an intentional tort against the religious organization because "the reasonableness of a church's supervision of a cleric—what the church 'should know'—requires inquiry into religious doctrine [in violation of the First Amendment]." *Gibson v. Brewer*, 952 S.W.2d 239, 247–48 (Mo. banc 1997). The Supreme Court discussed, but rejected, section 317 as part of its analysis of the *negligence* claims in *Gibson*. *Id.* at 247. The *Gibson* court only adopted section 317 as applied to an *intentional* tort.
- 5 For example, *Gibson* expressly acknowledges that religious organizations could be vulnerable to civil liability for acts of their clergy in situations involving negligent operation of a vehicle or where church property is negligently maintained in a dangerous condition causing injury from an accident. *Gibson*, 952 S.W.2d at 246.
- 6 This is not to say that we are concluding that *Gibson* would require a different result in *Smith* if it were decided today. We simply conclude that the two factual scenarios are distinguishable.
- 7 D.T. argues that the Diocese should have warned parishioners that Tierney had been accused of abuse by others. This course of action could have a host of problems associated with it, such as violating the privacy of other parishioners or violating religious privileges associated with confessions. These issues seem to be among those that *Gibson* seeks to avoid as "excessive entanglement" with religion.
- 8 D.T. cites an unpublished Magistrate's order from the United States District Court of the Eastern District of Missouri, who reportedly declared that *Gibson* was wrongly decided by our Supreme Court. We are not free to disregard *Gibson* on this basis. *Doe v. Roman Catholic Diocese of St. Louis ("Doe I")*, 311 S.W.3d 818, 823 (Mo.App.E.D.2010) ("Though meriting our respect, decisions of the federal district court and intermediate appellate courts and decisions of other state courts are not binding on us.").
- 9 At oral argument, D.T.'s counsel cited three cases from other jurisdictions for the proposition that the premises requirement of section 317 of the RESTATEMENT (SECOND) OF TORTS could be satisfied when the premises were in no way controlled by the employer, but were otherwise "related to" the employment of the tortfeasor. See *Frye v. Am. Painting Co.*, 642 N.E.2d 995 (Ind.Ct.App.1994); *Tallahassee Furniture Co. v. Harrison*, 583 So.2d 744 (Fla.Dist.Ct.App.1991); *Coath v. Jones*, 277 Pa.Super. 479, 419 A.2d 1249 (1980). Other than the fact that only one of these cases (*Frye*) analyzes liability under section 317 of the RESTATEMENT (SECOND) OF TORTS, each of these cases is factually distinct from the present case in a significant way: in each case, an employee was present in the home of the tort victim initially solely because of his employment; then the employee later returned to the victim's home where he committed an intentional tort. As stated above, *Tierney's* access to neither his mother's house nor the hotel was in any way facilitated by his status as a priest. Accordingly, these cases are inapposite to the present appeal.
- 10 Section 41. Duty to Third Parties Based on Special Relationship with Person Posing Risks
 - (a) An actor in a special relationship with another owes a duty of reasonable care to third parties with regard to risks posed by the other that rise within the scope of the relationship.
 - (b) Special relationships giving rise to the duty provided in Subsection (a) include:
 - (1) a parent with dependent children,
 - (2) a custodian with those in its custody,
 - (3) an employer with employees when the employment facilitates the employee's causing harm to third parties, and
 - (4) a mental-health professional with patients.
- 11 Of course, since *Hills* is deciding whether the club *negligently* failed to supervise the assistant coaches under section 317 of the RESTATEMENT (SECOND) OF TORTS, the standard used was whether the club reasonably should have known of a need to supervise or control the assistant coaches. *Hills v. Bridgeview Little League Assoc.*, 195 Ill.2d 210, 253 Ill.Dec. 632, 745 N.E.2d 1166, 1180 (2000). D.T. has alleged intentional failure to supervise clergy, which would,

according to *Gibson*, require a showing that the Diocese, as supervisor, “knew that harm was certain or substantially certain to result” but that the Diocese “disregarded this known risk” and that the Diocese’s “inaction caused damage.” *Gibson*, 952 S.W.2d at 248.

- 12 And because the Restatements of the Law, as a series of treatises, are not binding precedent upon any court but, rather, constitute the American Law Institute’s compilations of law and general statements on what the law is or should be, our Missouri Supreme Court may elect to continue to endorse an outdated and superseded RESTATEMENT (SECOND) OF TORTS, section 317, as one of the required elements of the tort of intentional failure to supervise clergy.

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Part B – Statute of Limitations Cases

Powel v. Chaminade College Preparatory, Inc., 197 S.W.3d 576 (Mo. banc 2006).

Missouri Supreme Court allowed victim of childhood sexual abuse to toll the statute of limitations for period of time during which memory of the offense was suppressed by the victim. Standard for determining when damage from abuse is capable of ascertainment and concurring opinion expresses skepticism that Plaintiff, who was a high school student at the time of the abuse, could establish that an objective person of high school age and maturity could not ascertain damage from the abuse at the time it was inflicted.

Graham v. McGrath, 243 S.W.3d 459 (Mo. Ct. App. E.D. 2007)

Dempsey v. Johnston, 299 S.W.3d 704 (Mo. Ct. App. E.D. 2009)

Two post-*Powel* cases affirming summary judgment on behalf of the church in claims of childhood sexual abuse. In *Dempsey*, Court pointed out that non-disclosure is different than suppression of memory. If someone remembers abuse and does not disclose it out of shame or embarrassment, the statute of limitations is not tolled.

197 S.W.3d 576
Supreme Court of Missouri,
En Banc.

Michael POWEL, Appellant,
v.
CHAMINADE COLLEGE PREPARATORY,
INC., and the Marianist Province
of the United States, Respondents,
and
Archbishop Justin Rigali, William
Christensen, and John J. Woulfe, Defendants.

No. SC 86875.

|
June 13, 2006.

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As Modified on Denial of Rehearing
Aug. 22, 2006.

Synopsis

Background: Former student filed failure to supervise complaint against boarding school run by clergy members, archbishop, and teachers, alleging that teachers sexually abused him while he was a minor attending and living at boarding school. The Circuit Court, St. Louis City, John J. Riley, J., dismissed the charges as time-barred. Former student appealed.

The Supreme Court, Laura Denvir Stith, J., held that genuine issue of material fact existed as to when former student's damages became ascertainable.

Reversed and remanded.

Wolff, C.J., filed an opinion concurring in the result in which Russell, J., concurred.

Price, J., filed a dissenting opinion.

Procedural Posture(s): On Appeal; Motion to Dismiss.

Attorneys and Law Firms

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Opinion

LAURA DENVIR STITH, Judge.

This Court must determine whether the bar of the statute of limitations required entry of summary judgment in Respondents' favor on Michael Powell's claims against them for intentional failure to supervise clergy. Michael alleges that defendants Father William Christensen and Brother John Woulfe, while teachers living at Chaminade College Preparatory, Inc., sexually abused him while he was a minor attending and living at the school in the 1970s.¹ He alleges he repressed his memory of that abuse until age 41 and only then did the statute of limitations begin to run.

Applying what it believed was the controlling decision, *H.R.B. v. Rigali*, 18 S.W.3d 440 (Mo.App. E.D.2000), the trial court determined that Michael's damages became "capable of ascertainment" and the statute of limitations began to run when the sexual abuse occurred, that the statute of limitations was not tolled during the time Michael suppressed his memory of the wrong, and that his claim was time-barred before he brought suit in 2002. It entered judgment accordingly.

This Court reverses and remands for further proceedings. A tort claim such as that asserted by Michael does not accrue, and the limitations period does not begin to run, "when the wrong is done or the technical breach of ... duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment." Sec. 516.100, RSMo 2000.² Here, the parties' *578 interpretation of the facts is clearly in conflict. Respondents argue that statements in Michael's deposition demonstrate that he knew of the wrongful conduct and that he had sustained substantial injury prior to his alleged repression of his memory, pointing to various parts of his deposition and other record evidence in support. Michael argues that his affidavit and that of his expert along with other parts of the record support his claim that he repressed his memory of the sexual misconduct before the resulting emotional and psychological damages caused by the wrongful

conduct occurred, so that his damages were not capable of ascertainment until he regained those repressed memories in 2000.

While it is clear that the record contains conflicting evidence of what Michael knew at what point, the salient issue for statute of limitations purposes is whether these conflicts in evidence create a question of fact on the key issue whether, prior to his alleged memory repression, a reasonable person in Michael's position would have known or been put on inquiry notice not just of the wrong and nominal immediate injury therefrom, but also that substantial, non-transient damage had resulted and was capable of ascertainment.

It is not appropriate for this Court to make credibility determinations on summary judgment. Further, it is premature to determine whether Michael can meet this standard, for the trial court and parties have not yet had the opportunity to address whether this record presents a material factual question under this standard, nor have the parties had the opportunity to address whether additional discovery is necessary prior to determining this issue. This Court, therefore, reverses the judgment and remands the case.

I. FACTUAL AND PROCEDURAL BACKGROUND

Michael Powel was born June 10, 1958. According to deposition testimony given by Michael in this case and others, he first suffered sexual abuse by a family member when he was only 5 or 6 years old. He suffered further sexual abuse from two other family members on several occasions between ages 6 and 10, and suffered substantial sexual abuse from the age of 9 or 10 until age 13, from two non-family members, one of whom committed serious acts of sexual abuse on dozens of occasions during that period.

Beginning in the fall of 1973, Michael, then aged 15, began attending Chaminade College Preparatory College, Inc. d/b/a Chaminade College Preparatory School, where Brother Woulfe and Father Christensen were members of the Marianist Province of the United States (Chaminade and the Marianist Province are hereinafter collectively referred to as "Chaminade"). Michael was a boarding student at the school, which is located in the city of St. Louis, between the ages of 15 and 17. He lived in Canning Hall. Brother Woulfe and Father Christensen also lived in Canning Hall. Michael remained a boarding student until the spring of 1975, when Chaminade expelled him for selling alcohol to other students at the school.

Once expelled, Michael, then age 17, moved to the home of his friend and fellow student, Marc, in Springfield, Illinois. According to deposition testimony, while there he was abused by Marc's mother. When that abuse was discovered, Michael had to leave. After leaving Marc's home, Michael felt he was good for nothing except sexual abuse. He started to hitchhike, and sometimes men would pay him for sexual favors. This conduct occurred *579 over the next four years. He continued to display a multitude of emotional and physical problems over the next decades.

In February 2000, Michael was diagnosed with a brain tumor. In the course of treatment for that condition, he regained previously repressed memories of five occasions of sexual abuse at the hands of Father Christensen and three occasions of sexual abuse at the hands of Brother Woulfe from 1973 to 1975, while a boarding student at Chaminade, including, *inter alia*, fondling, oral sex, and sodomy. Father Christensen also introduced Michael and his friend Marc to pornography at a St. Louis theater.

Michael alleges that, although he repressed his knowledge of the abuse, it caused post-traumatic stress disorder that subconsciously affected his conduct. This, he says, is what caused him to act out inappropriately, resulting in his dismissal from Chaminade and later his inappropriate sexual conduct, although he was not aware that this was the reason for his improper conduct until he regained his repressed memories in 2000 and began receiving therapy and treatment by a licensed clinical psychologist, Dr. Michael S. Greenburg, in 2001. On June 2, 2002, Michael filed suit against Chaminade for intentional failure to supervise clergy and individually against Father Christensen and Brother Woulfe for his damages resulting from the sexual abuse.

Chaminade filed a motion for summary judgment, claiming Michael's suit was barred by the statute of limitations. It pointed out that the report of Michael's expert psychologist, Dr. Greenberg, stated that Michael remembered being molested until approximately age 17 but then repressed his memories, and that at his deposition Michael said he always knew he had been abused, although he did not specify which abuse he had always known occurred.

Michael countered that his claim was not time-barred because he filed suit within the statutory period after ascertaining that he had been abused by Father Christensen and Brother Woulfe as a minor and that this abuse had caused or contributed to his psychological problems. Dr. Greenberg filed an affidavit

clarifying that Michael had never told him that he knew of the sexual abuse prior to age 17. Rather, when asked repeatedly by Dr. Greenberg whether his memories of childhood abuse might have been “suggested” to him by a counselor he saw after he had his brain tumor at age 41, Michael had insisted he had recalled the childhood abuse before seeing the counselor, not as a result of her questioning. No testimony by Michael, and nothing in Dr. Greenberg's report, specifically states that Michael recalled abuse by Father Christensen or Brother Woulfe before age 17 or that he always knew of it (as opposed to one or more of the other sexual abuse incidents he testified had occurred). Michael elsewhere made it clear he had repressed knowledge of the abuse by Father Christensen and Brother Woulfe from the age of 17 until the time of the brain tumor. He filed an affidavit clarifying that he did not recall their sexual abuse until he regained his repressed memories.

The record presented factual issues (some of which are relevant and some not) as to what Michael knew and what he remembered at different points in his life about abuse by Father Christensen, Brother Woulfe, and others. The trial court concluded that, were it free to do so, it would find that a genuine issue of material fact existed as to whether Michael's damages were capable of ascertainment before he recovered his memories as an adult. But, the trial court said, it was bound by *580 *H.R.B.* to hold that damages resulting from sexual abuse are sustained and capable of ascertainment at the time of the abuse. It granted defendants' motion for summary judgment.

Michael appealed to the Court of Appeals, Eastern District, which transferred the case to this Court after opinion for resolution of the apparent conflict as to the meaning of the phrase “sustained and capable of ascertainment” as interpreted in *H.R.B.* as compared to various cases of this Court that would require a holding that the cause of action was not time-barred. Mo. Const. art. V, sec. 10.

II. STANDARD OF REVIEW

Summary judgment shall be entered if “there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Rule 74.04(c)(6). The moving party bears the burden of establishing a right to judgment as a matter of law. *Id.* The statute of limitations is an affirmative defense, Rule 55.08, and respondents who move for summary judgment on that basis bear the burden of showing that it bars plaintiff's claims. *Warren v. Paragon Technologies Group, Inc.*, 950 S.W.2d 844, 846 (Mo. banc 1997). When reviewing

a motion for summary judgment, this Court reviews “the record in the light most favorable to the party against whom judgment was entered” and accords that party “the benefit of all reasonable inferences from the record.” *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993) (citations omitted). Review is essentially *de novo*. *Id.*

III. THE CAPABLE OF ASCERTAINMENT STANDARD

Michael claims the trial court erred in granting Chaminade's motion for summary judgment because his memory of the abuse was repressed, and once he recovered that memory in 2000, he took timely steps to file the instant suit against Chaminade for intentional failure to supervise clergy. The parties agree that plaintiff's tort claim against Chaminade for intentional failure to supervise clergy is governed by the general, five-year tort statute of limitations set out in section 516.120(4), which applies to an action for any “injury to the person or rights of another, not arising on contract and not herein otherwise enumerated.” But, the parties disagree as to when that statute began to run. Only that question is addressed.

A. When Are Damages are “Capable of Ascertainment” in Missouri?

As noted in *Chem. Workers Basic Union, Local Number 1744 v. Arnold Sav. Bank*, 411 S.W.2d 159, 164 (Mo. banc 1966), the short answer to this question is that the statute began to run when the damage resulting therefrom was sustained and capable of ascertainment. *Jepson v. Stubbs*, 555 S.W.2d 307, 312–13 (Mo. banc 1977), quoted a law review article identifying four events differing jurisdictions use as “triggers” for the accrual of a cause of action and the beginning of the running of the statute:

- [1] the moment the defendant commits his wrong (the ‘wrongful act’ test);
- [2] the moment the plaintiff sustains substantial injury or interference (the ‘sustainment of injury’ test);
- [3] the moment that plaintiff's damages are substantially complete (the ‘capable of ascertainment’ test); or
- [4] the moment the plaintiff first becomes aware that

he had been aggrieved (the so-called 'discovery' test).

Frederick Davis, *Tort Liability and the Statutes of Limitation*, 33 Mo. L.Rev. 171, 187–88 (1968). Professor Davis concluded that:

*581 The policy established by the Missouri statute adopts the third test. The running of the statute is measured from the time that the damages are complete *and* capable of ascertainment.

Id. (emphasis in original).

The capable of ascertainment test was expressly adopted by Missouri's legislature in 1919 for tort cases generally in section 1315, RSMo 1919. It has undergone only minor changes over the years and is now set out in section 516.100 as follows:

Civil actions, other than those for the recovery of real property, can only be commenced within the periods prescribed in the following sections, after the causes of action shall have accrued; provided, that for purposes of sections 516.100 to 516.370, the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the *damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item*, so that all resulting damage may be recovered, and full and complete relief obtained.

(emphasis added). *Thorne v. Johnson*, 483 S.W.2d 658, 660–61 (Mo.App.K.C.1972), noted that the predecessor to section 516.100 was enacted in response to two earlier cases in which

this Court said that under the prior statute the limitations period began to run when the wrong or technical breach occurred, and that:

The 1919 amendment had the effect of disapproving the foregoing choice which had previously been made by the courts. By that amendment to the statute of limitations, the *Legislature stated in the plainest of words that the cause of action should no longer be deemed to accrue 'when the wrong is done or the technical breach of contract or duty occurs'*, as had been held.... Instead ... the cause of action shall be deemed to accrue and limitations shall commence to run only from the time 'when the damage resulting therefrom is sustained and is capable of ascertainment'.

Id. at 661–62 (emphasis added).

All parties agree that section 516.100 governed the accrual of Michael's cause of action, at least until 1990. The more difficult issue, and one as to which Missouri opinions have not always been wholly consistent, is how to determine what the legislature meant by the phrase that the damages must be "sustained and ... capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained."

Plaintiff, in effect, asks this Court to hold that by this phrase the legislature meant that the statute of limitations would not begin to run until he subjectively became aware that he suffered damages and that they were caused by "the actions of the individuals" in question and were connected to his psychological injuries. This is very similar to the standard suggested in the law review article cited in *Jepson*. Professor Davis argued "capable of ascertainment" means when plaintiff subjectively should have discovered the injury and damages. 33 Mo. L.Rev. at 187–88. This Court specifically rejected this test, reasoning that if so construed, the test would be little different than the "discovery" rule, and "[t]his is not what the legislature did and it is not for us to rewrite the statute to so provide." *Jepson*, 555 S.W.2d at 313. Unfortunately, *Jepson* did not go on to expressly set out the proper test for when damages *are* capable of ascertainment.

Respondents argue that the proper interpretation of "capable of ascertainment" is that the statute of limitations begins to *582 run when the sexual abuse allegedly occurred—here from 1973 to 1975—because that is when the injury objectively *could have been* discovered or made known if the victim had not repressed his memory of it. They argue that if

the alleged events occurred, they must have been traumatic and so must have caused immediate damage so that plaintiff could have maintained suit immediately.

Chaminade's argument also misses the mark. While, as they note, this Court has held that the test to be applied is an "objective" one, *Chem. Workers*, 411 S.W.2d at 163–65, the test respondents propose would make the statute begin to run at the time of the wrongful act in almost every sexual abuse case in which the victim was not an infant and was without mental disability. Indeed, as the parties note, this is exactly what was held in *H.R.B.*, 18 S.W.3d at 443, which the trial court felt bound to follow.

Yet, as *Jepson* teaches, and as *Thorne* noted, the legislature specifically required in section 516.100 that a court *cannot* make the time the wrong is done or the technical breach of duty occurs the time when the cause of action accrues. Neither does it accrue as soon as damages occur. A third event must also take place before the claim accrues: in addition to a wrongful act, and in addition to resulting damages, the damages must also be *capable of ascertainment*. Sec. 516.100.

For this reason, *Sheehan v. Sheehan*, 901 S.W.2d 57, 59–60 (Mo. banc 1995), specifically rejected the argument made by the dissenting judge therein that damages from major sexual abuse are always sustained when the wrongful conduct occurs and are capable of ascertainment at that time. *K.G. v. R.T.R.*, 918 S.W.2d 795, 798 (Mo. banc 1996), reaffirmed that understanding of *Sheehan* a year later, stating, "[i]n *Sheehan*, *supra*, this Court held that ... in cases of involuntary repressed memory, the date the injury occurs may be later in time than the battery."

But, if damages are not capable of ascertainment at either the time of the wrong or the time of discovery of the wrong and resulting damages, then what is the test for when damages are capable of ascertainment? Although this Court has not previously clearly articulated a specific, generally applicable test to be used in making this determination, a consistent approach is evident upon careful review of this Court's decisions from the last 40 years: *the statute of limitations begins to run when the "evidence was such to place a reasonably prudent person on notice of a potentially actionable injury."*³ At that point, damages would be sustained and capable of ascertainment as an objective matter—or, in the words of Professor Davis, that is the moment

when the damages would be "substantially complete." Davis, 33 Mo. L.Rev. at 187–88.

Thus, in *Chem. Workers*, 411 S.W.2d at 164–65, a union claimed that the statute of limitations did not begin to run on its president's conversion of funds until it discovered the signatures he had forged on checks. This Court disagreed and held that if an act is not legally injurious until consequences occur, then the period of damage runs from the date of consequential injury. *Id.* The consequential injury was the triggering factor, not the wrong. The statute began to run once the union officers were put on notice of a problem because their anticipated dividend checks were not deposited, for at that point "upon *583 any inquiry [the damages] soon could have been discovered and made known," "[s]ince the amount of damage [equaled] the amount of the check." *Id.* at 165.

Notice of some substantial damage resulting from the wrong was also identified as the triggering event in *Dixon v. Shafter*, 649 S.W.2d 435 (Mo. banc 1983). Four partners signed a contract without being informed by their fifth partner, an attorney, about a clause in the contract that ultimately caused them damage. Although the wrong had existed and had been at least theoretically ascertainable since the inception of the contract, the statute of limitations did not begin to run until the lawyer-partner advised the remaining partners that they should get independent counsel because he had made a mistake in the contract. At that point, although the remaining partners did not know the extent of their damages, they did know that "a substantial claim existed as to them. They had suffered some damage, at least to the extent that they had to hire new counsel who would have otherwise been unnecessary." *Id.* at 438.

A similar approach was taken in *Martin v. Crowley, Wade & Milstead, Inc.*, 702 S.W.2d 57 (Mo. banc 1985). In 1983, plaintiffs sued defendants for the latter's negligent 1973 survey of their residential lot, which had caused them to build their house in the wrong place, resulting in diminished market value. The trial court found the statute of limitations commenced running at the time of the negligent survey in 1973, at which point "the defect complained of was visible and ascertainable by an easy inspection of the land or by asking a neighbor." *Id.* at 58. This Court reversed, stating that plaintiffs should not be required to "double check the services provided by a professional expert." *Id.* Nothing indicated that "plaintiffs knew or should have known of any reason, until May, 1981, to question defendant's work." *Id.* It was only when they learned in 1981 that the house had been built too

close to the property line that the statute began to run, for the “mere occurrence of an injury itself does not necessarily coincide with the accrual of a cause of action.” *Id.*

Indeed, *Martin* stated, a holding that the statute begins to run under section 516.100 at the time of the wrong “would deprive the additional language ‘and is capable of ascertainment’ of any meaning.” *Id.* In other words, *Martin* gave the phrase “capable of ascertainment” a practical construction; until plaintiff has sufficient knowledge to be put on “inquiry notice” of the wrong and damages, that standard is not met.

In *BMA*, 984 S.W.2d 501, this Court again held that notice of sufficient information to alert plaintiff of the need to make inquiry was the trigger for the running of the statute of limitations. In that case, marble panels were installed on the outside of an office building when it was built in the 1960s. The defect existed from the start, so at least theoretically some damage had been sustained at that time, which the owners could have ascertained if they had looked behind the marble slabs covering the building. As a realistic matter, no owner would do so until alerted to check the slabs, however.

This Court rejected defendant's claim that the statute began to run as soon as the building was built, or even when other problems with the panels became known over the ensuing decade. It took a more practical approach and held that the damages were sustained and capable of ascertainment only when the damage sued for was substantially complete, which is when the “evidence was such to place a reasonably prudent person on notice of a potentially actionable injury.” *Id.* at 507. This occurred in 1985 when the first panels *584 began to fall. In other words, *BMA* took the approach that it is not the existence of a nominal claim for damage, but the occurrence and capability of ascertaining actual and substantial damage, that begins the running of the statute.

Of course, as this Court reiterated in *Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. banc 1997), “[a]ll possible damages do not have to be known, or even knowable, before the statute accrues.” But, *Klemme* also reaffirms that the mere existence of the wrong and some nominal damage is not enough. Plaintiff must also have notice of these facts or of something that puts plaintiff on notice to inquire further. Thus, in *Klemme* plaintiff sued his attorney for malpractice. So long as he and defendant had an active attorney-client relationship, this Court said, he “was under no duty to double check” his attorney's work. *Id.* “However, by the time [he] retained separate counsel ... the fact of damage could have been

discovered or made known. At that point any inquiry would have revealed that [counsel] had not sought [his] removal from the federal suit.” *Id.*

B. Applying an Objective Standard to Repression of Memory Cases.

The standard to be gleaned from these prior cases has special application to cases of repressed memory. If the memory of the wrong was repressed before the victim had notice both that a wrong had occurred and that substantial damage had resulted, or before the victim knew sufficient facts to be put on notice of the need to inquire further as to these matters, then the claim would not yet have accrued at the time that the victim repressed his or her memory of the events. From that point forward, until the memories were regained, while the victim might have suffered damage, the victim would not have sufficient notice to have a duty to inquire further. Only when he or she regained the repressed memories would the victim for the first time have “reason to question” defendant's conduct and have information sufficient “to place a reasonably prudent person on notice of a potentially actionable injury.” *BMA*, 984 S.W.2d at 507.

This is consistent with the approach taken by this Court in prior cases involving sexual abuse. Thus, *Sheehan* held that plaintiff's petition did not “indicate on its face and without exception that suit was barred,” because it was “ambiguous as to when [plaintiff] objectively could have discovered or made known the fact of damage.” 901 S.W.2d at 59 (emphasis added). In essence, this Court was stating that the pleadings raised a question as to when plaintiff had sufficient information to have been put on notice of a potentially actionable injury.

Similarly, in *K.G.*, this Court held, “it is the memory of the consequential injury and damages,” 918 S.W.2d at 798, (and not either the occurrence of the wrong or the discovery of the tortfeasor) that begins the running of the statute of limitations. This meant that, where memories had been repressed before the victim became aware of her damages, the statute might not begin to run until she regained her memories. *Id.*

In sum, under the above cases the capable of ascertainment test is an objective one. The issue is not when the injury occurred, or when plaintiff subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages. At that

point, the damages *585 would be sustained and capable of ascertainment as an objective matter.⁴

IV. APPLICATION OF THE STANDARD TO THIS CASE

Because the capable of ascertainment standard is an objective one, where relevant facts are uncontested, the statute of limitations issue can be decided by the court as a matter of law. “However, when contradictory or different conclusions may be drawn from the evidence as to whether the statute of limitations has run, it is a question of fact for the jury to decide.” *Lomax v. Sewell*, 1 S.W.3d 548, 552–53 (Mo.App. W.D.1999); *Straub v. Tull*, 128 S.W.3d 157, 159 (Mo.App. S.D.2004).

Under the approach advocated by Chaminade, the statute would have been triggered and damages held to be capable of ascertainment at the time of the abuse. While it would have been tolled during Michael's minority, it would have begun running as soon as he turned age 21, and he would only have had the statutory period in which to bring his claim. This would be true even though he had by that time repressed his memory of the events, for the statutes in effect at the time of the wrongs here sued for did not provide for tolling due to repressed memories. Although such a statute was enacted in 1990, *see sec. 537.046, RSMo Supp.1990*, as this Court held in *Doe*, it cannot constitutionally be applied to claims that were time-barred before its effective date. 862 S.W.2d at 341–42.

This approach in practical effect equates sustainment of injury with when the damages are capable of ascertainment and, at least in cases of repressed memory, effectively makes the date of the wrongful conduct the date when the statute of limitations begins to run. For all the reasons discussed earlier, this approach is incorrect. As Judge Wolff's concurring opinion notes, it ignores the fact that in some cases the victim may be so young, mentally incompetent or otherwise innocent and lacking in understanding that the person could not reasonably have understood that substantial harm could have resulted from the wrong.⁵

*586 Additional discovery may clarify whether a reasonable person in Michael's situation would have been capable of ascertaining the substantial nature of the damages he suffered and for which he now seeks recompense. But, on this record, these are questions of fact that cannot be resolved by this Court on summary judgment, as the concurring opinion seems to suggest might be possible as to some issues. This is

particularly true where, as here, because the parties did not have the benefit of this opinion, neither they nor the trial court have addressed the statute of limitations issue from the objective, “reasonable person” standard set out herein. Neither have they addressed whether additional discovery is necessary in order to resolve the relevant issues under this standard. It is appropriate that the trial court and parties resolve these issues under the standard set out herein in the first instance.

V. CONCLUSION

For the reasons set out above, the judgment is reversed, and the cause is remanded. To the extent that *H.R.B., Vandenheuvel v. Sowell*, 886 S.W.2d 100 (Mo.App. W.D.1994), *Harris v. Hollingsworth*, 150 S.W.3d 85 (Mo.App. W.D.2004), and similar cases set out a standard inconsistent with that set out herein, they are no longer to be followed.

LIMBAUGH and WHITE, JJ., and BLACKMAR, SR. J., concur.

WOLFF, C.J., concurs in result in separate opinion filed.

RUSSELL, J., concurs in opinion of WOLFF, C.J.

PRICE, J., dissents in separate opinion filed.

TEITELMAN, J., not participating.

MICHAEL A. WOLFF, Chief Justice, concurring.

I concur in the result of the principal opinion but I am doubtful whether, on remand after further discovery, Powel's claim can survive summary judgment.

An action “shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment....” Section 516.100. I agree with the principal opinion that the “capable of ascertainment” standard is an objective one. *Sheehan v. Sheehan*, 901 S.W.2d 57, 59 (Mo. banc 1995). It is only “when contradictory or different conclusions may be drawn from the evidence as to whether the statute of limitations has run” that it becomes a question for the jury. *Lomax v. Sewell*, 1 S.W.3d 548, 552–53 (Mo.App.1999). I also agree with the principal opinion that “the statute of limitations begins to run when the ‘evidence

was such as to place a reasonably prudent person on notice of a potentially actionable injury.’ ” (Citation omitted).

The circuit court believed it was bound by *H.R.B. v. Rigali*, 18 S.W.3d 440 (Mo.App.2000). *H.R.B.* may have gone too far in stating that “[w]here an overt sexual assault occurs, the injury and damage resulting from the act are capable of ascertainment at the time of the abuse.” 18 S.W.3d at 443. There is an obvious difference in the ability of a five-year-old to ascertain damages and a 15-year-old. *587 Without considering *H.R.B.*, the circuit court on remand, after further development of the record, may consider a motion for summary judgment.

Is there a factual issue as to when Powel's damages were “capable of ascertainment?” His deposition testimony indicates no such factual issue—his damages were ascertained at the time of the alleged abuses.

On the record so far, the factual issue that Powel creates, to avoid summary judgment, is with his own testimony. Powel in his affidavit says he repressed memory of the alleged sexual abuse, but Powel also testified in his deposition that he always remembered the alleged abuse. The affidavit of Powel's expert, a psychologist, is based on Powel's contradictory and unsubstantiated statement; it adds nothing to determine whether there is a factual issue.

This record developed thus far may show some confusion on Powel's part, but it does not seem to create a “genuine issue of material fact” for a jury's determination.

The Statute of Limitations

The purpose of statutes of limitations is to bar stale claims. *Thatcher v. De Tar*, 351 Mo. 603, 173 S.W.2d 760, 761 (1943). The relevant statute of limitations here is five years after the cause of action accrued. Sections 516.120(4) and 516.100.¹ The statute of limitations would have been tolled, however, based on Powel's minority. Section 516.170; *Strahler v. St. Luke's Hospital*, 706 S.W.2d 7 (Mo. banc 1986).²

The statute of limitations is an affirmative defense. Rule 55.08. Most often a statute of limitations defense is established as a matter of law, by reference to the face of the pleadings or upon a motion for summary judgment, as in this case.

Powel's deposition testimony seems to demonstrate that his injuries were capable of ascertainment at the time of the alleged abuses. Furthermore, his testimony is that he always knew and remembered being molested, without any help from others.

The Facts Pertinent to the Statute of Limitations

Powel relies on his unsupported claim that “he did not realize he had suffered a wrong at the time” of the alleged abuse. This reliance is contrary to the concept of an objective test: the question is whether a reasonable person in his situation would realize he had suffered a wrong. The situation Powel describes in his deposition would certainly have made a reasonable person aware of the wrong. Powel testified in his deposition as to the sexual abuse that he said occurred in 1973–1975 while he was a high school student at Chaminade. He said he felt disgusted and “sick to [his] stomach” and associated physical and emotional pain after each of the alleged sexual assaults perpetrated by *588 Woulfe. “I felt it was wrong,” he said. Powel also testified that he felt physically and emotionally sick after incidences in which Christensen engaged him in viewing x-rated films, oral sex, fondling, and anal sodomy. Powel's psychologist report states that Powel reported feeling “dirty, confused, ashamed, and had to hold these experiences a secret from others.” Powel testified that he avoided Woulfe and Christensen after the abuses. Powel remembered being molested and abused until sometime during his 17th year. These incidences, if they occurred, were certainly “capable of ascertainment.” Nothing in the record refutes these admissions.³

Sometime around age 17 until he was 41, however, Powel said he repressed his memory of these abuses. His deposition testimony, however, acknowledges a statement that directly contradicts his story of repressed memory. Powel was asked about a statement contained in the psychological evaluation of the psychologist to whom he was sent by his attorney to substantiate his repressed memory theory. In deposition, Powel was first asked whether he told the psychologist that he always remembered the abuse. Powel avoided the question by claiming that his statement was taken out of context. So, Powel was asked directly: “[D]id you know, always know that you had been molested and remembered it from the beginning without any assistance from others?” His response: “Yes.” He twice gave an affirmative answer to this question.

Based on Powel's deposition and other evidence presented in the summary judgment proceedings, the circuit court found

that “there is no doubt here that [Powel] was consciously aware of the abuse when it occurred.” The court also found that “there is no question here that the abuse was emotionally traumatic and sometimes, physically painful when it occurred.” Even Powel's response to defendants' motion for summary judgment admits that the evidence “establishe[s] that the alleged acts of sexual abuse, which occurred between 1973 and 1975, were overt, traumatic and painful at the time of their occurrence.”

Applying the Law

Whether Powel repressed his memory is irrelevant because his injuries were capable of ascertainment when the abuses occurred. As the principal opinion notes, at the time of the alleged wrong, there was no statute in effect that provided for tolling due to repressed memory.⁴

Powel's damages were objectively *capable* of ascertainment when they occurred. Subjective knowledge of damages is not required. To hold that the statute of limitations began to run when Powel allegedly regained his memory, while completely ignoring the facts that Powel was harmed and knew—as any reasonable person would—that the abuse was wrong when it occurred, improperly institutes a discovery *589 standard. The general assembly enacted a discovery standard for child sexual abuse cases in 1990 in section 537.046.⁵ Presumably this statute was enacted because the legislature believed one was needed. If having a repressed memory means that a plaintiff's damages were not capable of ascertainment under the statute of limitations in section 516.100, there would have been no need for section 537.046. If that were the case, Doe's claim in *Doe v. Roman Catholic Diocese of Jefferson City* would not have been barred.

At ages 15–17, Powell was a minor at the time of the alleged abuse. As such the statute of limitations was tolled until age 21. He had five years thereafter to file a claim. Section 516.170; *Strahler*. 706 S.W.2d at 11.

This is not the case of a very young child who does not know he or she is being abused when it occurs. There is an obvious difference in the ability of a five-year-old to ascertain damages and a 15-year-old. The 15 to 17-year-old Powel ascertained his damages. If his claim was ascertained at ages 15 through 17, his failure to bring the claim before his 26th birthday bars his claim.

Powel's damages need not be complete at the time they are first ascertained. A cause of action accrues when a party can first ascertain the fact of damage, even though he may not know the extent of the damage. *Business Men's Assur. Co. of America v. Graham*, 984 S.W.2d 501, 507 (Mo. banc 1999). The fact that Powel's damages may not have become “complete” until after a period of memory repression is irrelevant. The fact that he suffered damages was known. The alleged memory repression, as an excuse for not filing his claim on time, does not create an issue to be tried.

Does Powel create a “genuine” issue of material fact?

Assuming, for sake of argument, that a repressed memory is a valid excuse for not filing his claim on time, Powel's position seems unsupported. To defeat the motion for summary judgment, Powel submitted his own affidavit and that of a psychologist to make a genuine issue of fact by contradicting his own deposition testimony that he always remembered the abuse.

The summary judgment rule requires that evidence submitted by affidavit be admissible. Rule 74.04(e). The circuit court said that the affidavits of Powel and Dr. Greenberg were sufficient to rebut Powel's deposition testimony.

On remand, I believe this position should be reconsidered, especially if the record does not change substantially. The circuit court could exclude the expert's opinion in the affidavit under the standard for admissibility governed by section 490.065. Because Powel's deposition testimony contradicts the expert's factual basis for his opinion, the proposed purported expert testimony fails two key criteria set forth in section 490.065.

The first criterion that the expert's opinion fails to meet is section 490.065.1, which provides that “if scientific, technical or other specialized knowledge will *assist the trier of fact* to understand the evidence or to determine a fact in issue, a witness qualified as an expert ... may testify *590 thereto in the form of an opinion or otherwise.” (Emphasis added.) In this case, Powel's deposition testimony is that he always remembered the alleged sexual molestation. It is difficult to see how an expert's opinion, whose factual basis is contradicted by Powel's sworn testimony, would at all “assist the trier of fact.” The expert's report and affidavit go to some length to dispel the notion that Powel's memory of molestation had been created by suggestion from a therapist. What the expert does not establish is any objective

determination that Powel's memory was in fact repressed. The expert describes Powel as a "reliable reporter" after trying to explain away psychological test results that show substantial psychopathology. The most that can be said of the expert's opinion as to repressed memory is that it is based solely on what Powel told him. What does "reliable reporter" mean? For what it is worth, does the expert believe him?

The second criterion that the expert's opinion fails to meet is the requirement of section 490.065.3 that the facts or data on which an expert bases his or her opinion "must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject" and the facts or data "must be otherwise reasonably reliable." The fact—upon which the expert relied in rendering his opinion—is Powel's statement that he repressed the memory of the events at about the age of 17 and did not remember them until after he suffered a brain tumor at age 41. That fact, however, is not reasonably reliable because it is contradicted by Powel's own sworn testimony.

There is nothing in the psychologist's affidavit to indicate that a fact derived from an interview—which not only contradicts sworn testimony, but is based solely on what Powel supposedly said to the psychologist—is of the type "reasonably relied upon by experts in the field." This subjective and contradicted fact, which is the basis for the psychologist's opinion, cannot be considered reasonably reliable in the absence of evidence that such facts are relied upon by experts in the field. As I indicated above, I am not even sure this expert believes him. Why should a court?

It is for the trial court to determine admissibility based on these criteria, and I would suggest that the court do so on remand. The factual basis of the expert's opinion is not a jury question. It is a determination made by the trial judge in assessing whether or not the testimony of the expert is admissible. On remand, the trial judge would be justified in ruling that the opinion of the psychologist is inadmissible under section 490.065. *See generally, State Bd. of Registration for the Healing Arts v. McDonagh*, 123 S.W.3d 146 (Mo. banc 2003) at pp. 152–158 (principal opinion) and pp. 160–161 (concurring opinion of Wolff, J.). I am not suggesting that the circuit court hold a wide-ranging *Daubert* type hearing because section 490.065 does not authorize that kind of hearing.⁶ Missouri's standard for admissibility of expert testimony in civil cases, which borrows some of the language from the Federal Rules of Evidence, Rules 702, 703, and 704(a), is a far simpler approach than the federal rules.

Under Missouri's approach, the trial judge must determine whether the testimony of the expert will assist the trier of fact and whether the expert's testimony is based upon reliable facts or data.

*591 Without the expert's opinion, the circuit court is left with the sworn testimony of Powel himself. It is noteworthy that the expert's affidavit was executed shortly after Powel's deposition testimony, as was Powel's affidavit. Both apparently were intended to contradict his deposition testimony so as to avoid summary judgment. Generally, "a party may not avoid summary judgment by giving inconsistent testimony and then offering the inconsistencies into the record in order to demonstrate a genuine issue of material fact." *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 388 (Mo. banc 1993). There may be circumstances in which a party may be permitted to contradict his own deposition testimony, where the deponent obviously was mistaken or misspoke. The context of Powel's answer was what he told the psychologist in the interview, which Powel says the defense misconstrued. He acknowledged saying that he always remembered the sexual abuse. His deposition appears to be consistent with his earlier statement to the psychologist—his testimony certainly does not appear to be a misstatement. The circumstances in this case, therefore, do not justify allowing Powel to establish an issue of fact with his own testimony.

The fundamental difficulty that I find in this case is that Powel's wholly subjective account—that his memory was repressed for 24 years—can be used to defeat a statute of limitations that should have barred this claim nearly 25 years ago. That his account is repeated by an expert, with no further substantiation or documentation, does not make his account any less subjective.

The statute of limitations in this case is tolled solely on the basis of what Powel says was in his mind (or was not in his mind for a period of years). Can a statute of limitations be nullified by a party who says he forgot something? Why have a statute of limitations?

The rule requires that summary judgment be granted where there is "no genuine issue as to any material fact." Rule 74.04(c). To find a genuine issue of material fact in this case is to re-institute the requirement of the former Rule 74.04(h) that summary judgment can only be granted where a movant establishes the right to judgment by "unassailable proof." This requirement was deleted in 1988 to mirror the language of the

federal rule. *ITT*, 854 S.W.2d at 378.⁷ The attempt to create an issue of fact with Powel's own testimony should not be countenanced by considering it a genuine issue of fact. It is not.

Neither Powel's revised testimony nor his expert's questionable opinion can produce an issue of material fact in the face of this admission and clear testimony that he had ascertained his injury at the time it allegedly occurred. Even where admissible expert testimony may support a repressed memory theory, courts should be very skeptical of this theory in light of the scientific literature.⁸ It is not necessary, *592 however, to weigh in on the scientific question in this case. The record of Powel's testimony as well as, presumably, his statement to the psychologist who examined him for this lawsuit show that, whatever its supposed validity, the so-called repressed memory theory simply does not fit.

Conclusion

This case starkly presents the genuine need for a dispassionate evaluation of the evidence on summary judgment that relates to the statute of limitations. Powel's deposition testimony avers that he has had a very troubled and difficult life, recounting many years of sexual abuse from a very early age.

The allegations that he was sexually abused by Father Christensen and Brother Woulfe in 1973–1975 are not said to be causally or otherwise related to the other incidents of sexual abuse. However much a court or jury may wish to help Powel with an award of damages because of injustices and injuries he has suffered throughout his life, it is highly speculative to suppose that these clerics and their superiors are the ones who owe him. Powel's feeling that he was “let down and betrayed by the church and its representative, particularly in light of the proper duties of church officials,” as the psychologist reports, is undoubtedly widely shared. That some Catholic clerics have been credibly accused of sexual abuse and that some in the church hierarchy have covered up sexual abuse in other cases do not make all such allegations worthy of trial.

The just purpose of the statute of limitations is to avoid presenting stale claims to a finder of fact, claims that are often difficult to prove or rebut. Powel's own testimony on this record shows that the statute of limitations bars his claim.

The Court remands this case to the circuit for further development of the record without the *H.R.B.* precedent. The remand should give the defendants, as well as Powel, the opportunity to show whether or not there is a genuine issue of fact to be tried under the “capable of ascertainment” standard. On the record thus far, I do not think that there is such an issue. But perhaps Powel can establish that there is an issue for trial. If not, summary judgment will be appropriate.

WILLIAM RAY PRICE, JR., Judge, dissenting.

I dissent. I joined Judge Holstein's dissenting opinion in *Sheehan v. Sheehan*, 901 S.W.2d 57, 59 (Mo. banc 1995). I still believe that the majority in *Sheehan*, as well as the majority here, state an “objective” standard, but apply a “subjective” one. Under an objective standard, a reasonable and competent 15-to-17-year-old man would know that he suffered harm from repeated sexual abuse by his teachers at a religious school.¹

Assuming there is an evidentiary issue here, the majority has misplaced the burden *593 of proof regarding the repressed memory exception. Defendants bear the burden of proof to establish that a claim is barred by the statute of limitations and they have met this burden. The alleged abuse occurred from 1973 to 1975 and suit was brought in 2002. Twenty-seven years had passed.

Plaintiff now bears the burden of proof to establish an avoidance of the statute of limitations based on repressed memory. “The party who relies on facts in avoidance of the statute has the burden of proving such facts.” *Scanlon v. Kansas City*, 325 Mo. 125, 28 S.W.2d 84, 92 (1930). “As the party claiming the exemption, plaintiff had the burden of showing exemption from the operation of the statute of limitations.” *Kellog v. Kellog*, 989 S.W.2d 681, 685 (Mo.App.1999).

As discussed in Chief Justice Wolff's opinion, plaintiff was asked “[D]id you know, always know that you had been molested and remembered it from the beginning without any assistance from others?” He answered “Yes.” Even if plaintiff submits other evidence to contradict this testimony, such evidence cannot carry his burden to establish repressed memory.

Where a party relies on the testimony of a single witness to prove a given issue, and the testimony of such witness is contradictory and conflicting, one version thereof tending to prove the issue, the other tending to disprove it, with no explanation of the contradiction, and no other fact or circumstance in the case tending to show which version of the evidence is true, no case is made, and the jury should not be permitted to speculate or guess which statement of the witness should be accepted.

Adelsberger v. Sheehy, 332 Mo. 954, 59 S.W.2d 644, 647 (1933). “A party may not avoid summary judgment by giving inconsistent testimony and then offering the inconsistencies into the record in order to demonstrate a genuine issue of material fact.” *ITT Com. Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 388 (Mo. banc 1993). “This is not so much a matter of being bound by what his witness

says as it is a failure of proof of an essential fact.” *Draper v. Louisville & N.R. Co.*, 348 Mo. 886, 156 S.W.2d 626, 633–34 (banc 1941).

Having admitted that he knew at the time that he had been molested and that he “remembered it from the beginning without any assistance from others,” plaintiff has precluded himself from proving the contrary. He cannot prove that his memory was repressed and he cannot avoid the running of the statute of limitations in this case. Further discovery can be of no value, but just needless expense to all of the parties.

One cannot read the record before us without great sympathy for Michael Powel. He tells of sexual abuse from family and teachers and then a life of promiscuity and pain. But the claims he makes arise from facts that occurred 27 years before the filing of his lawsuit. The evidence is stale; witnesses are lost. Any remedial value is too little and too late. Continuing this lawsuit serves neither the letter, nor the spirit of the law.

I would affirm the trial court's judgment.

All Citations

197 S.W.3d 576, 212 Ed. Law Rep. 479

Footnotes

- 1 For ease of understanding, this opinion refers to plaintiff by his first name because it largely discusses matters alleged to have occurred when he was a minor. The allegations stated herein are taken principally from Michael's testimony at his deposition.
- 2 Although all statutory references are to RSMo 2000 unless otherwise noted, section 516.100 has changed little since its enactment as section 1315 in 1919.
- 3 *Bus. Men's Assurance Co. of America v. Graham*, 984 S.W.2d 501, 507 (Mo. banc 1999) (“BMA”), discussed *infra*.
- 4 In *K.G.*, 918 S.W.2d. at 798, that occurred after the enactment of a special statute of limitations applicable in repressed memory cases. Sec. 537.046, RSMo Supp.1990. Although this Court held in *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993), that this statute cannot revive claims already barred at the time the statute was adopted, *K.G.* clarified that the special statute will apply to a sexual abuse/repressed memory claim for which the statute had not yet run in 1990. Contrary to respondents' arguments here, it would not be violative of the principles set out in *Doe* to apply the standard set out in section 537.046 here, for the statute of limitations had not run at the time it was enacted. Moreover, the interpretation of the “capable of ascertainment” test in this case follows prior sexual abuse cases. It does not establish new law, and there is no bar to applying it to cases such as this one.
- 5 It is evident that Chaminade is concerned that undue prejudice will occur as a result of the nature of the allegations of abuse, without regard to their accuracy, and that it seeks to avoid such prejudice by summary judgment. While its concern is a serious one, extensive voir dire, sequestration, changes of venue, a careful balancing of the probative value of evidence with its prejudicial effect, and similar mechanisms are the permissible methods for preventing such prejudice; precluding a jury from hearing the case because of concern that the jurors will overlook the weakness of plaintiff's evidence out of a desire to punish someone for clergy abuse generally is not appropriate.
- 1 Unless otherwise noted, all statutory citations are to RSMo 2000.
- 2 “Except as provided in section 516.105, if any person entitled to bring an action in sections 516.100 to 516.370 specified, at the time the cause of action accrued be either within the age of twenty-one years, or mentally incapacitated, such

person shall be at liberty to bring such actions within the respective times in sections 516.100 to 516.370 limited after such disability is removed." Section 516.170. (Emphasis added.)

3 Powel admits in his response to defendant's statement of uncontroverted material facts that he felt physically and emotionally ill after the alleged abuses.

4 Section 537.046, enacted in 1990, cannot be applied to revive claims on which the statute of limitations has run. *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. banc 1993).

5 Section 537.046.2 provides:

2. Any action to recover damages from injury or illness caused by childhood sexual abuse in an action brought pursuant to this section shall be commenced within ten years of the plaintiff attaining the age of twenty-one or within three years of the date the plaintiff discovers, or reasonably should have discovered, that the injury or illness was caused by childhood sexual abuse, whichever later occurs.

6 Cf., *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

7 Federal courts have often been overly aggressive in granting summary judgment under the *Celotex* trilogy of United States Supreme Court decisions. This, fortunately, has not been the case in Missouri courts although the standard stated is basically the same. See *ITT*, 854 S.W.2d at 378–379, citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).

8 See, for example, Loftus, E.F. Bernstein, D. M., "Rich False Memories: The Royal Road to Success," in A.F. Healy (Ed) *Experimental Cognitive Psychology and its Applications*, Washington DC: Amer. Psych. Assn. Press, p. 101–113 (2005); Loftus, E. F., "The Dangers of Memory," in R.J. Sternberg (Ed) *Psychologists Defying the Crowd*, Washington, DC: Amer. Psych. Assn. Press. Pp. 105–117 (2003). References in the legal literature include Gary M. Ernsdorff & Elizabeth F. Loftus, *Let Sleeping Memories Lie? Words of Caution about Tolling the Statute of Limitations in Cases of Memory Repression*, 84 J.Crim. L. & Criminology 129, 155–164 (1993); Wendy J. Kisch, *From the Couch to the Bench: How Should the Legal System Respond to Recovered Memories of Childhood Sexual Abuse?*, 5 Am. U.J. Gender & L. 207 (1996).

1 I agree with the majority and Chief Justice Wolff that there may be victims who are so young or lacking in understanding that they might not ascertain that they have been abused or harmed. No such exception was argued here.

243 S.W.3d 459
Missouri Court of Appeals,
Eastern District,
Division Three.

Herbert A. GRAHAM, Appellant,

v.

Father Michael McGRATH, Roman Catholic
Archdiocese of St. Louis, an unincorporated
association, and Archbishop Justin Rigali, of
the Archdiocese of St. Louis, MO., Respondents.

No. ED 89168.

|
Dec. 11, 2007.

|
Motion for Rehearing and/or Transfer to
Supreme Court Denied Jan. 16, 2008.

|
Application for Transfer Denied
Feb. 19, 2008.

Synopsis

Background: Plaintiff who was allegedly sexually abused by a priest filed a ten-count petition against priest, archdiocese, and archbishop in his representative capacity. One count was pleaded only against priest. The Circuit Court, City of St. Louis, Timothy J. Wilson, granted archdiocese and archbishop's motions for summary judgment, which disposed of all nine counts against them. Plaintiff appealed.

Holdings: The Court of Appeals, Roy L. Richter, P.J., held that:

damages to plaintiff were capable of ascertainment more than five years before plaintiff filed his petition, and thus all of plaintiff's causes of action except for child sexual abuse were barred by the five-year general statute of limitations, and

alleged mental disability of plaintiff during the four years preceding his filing of the petition did not toll the five-year general statute of limitations.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

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Opinion

ROY L. RICHTER, Presiding Judge.

This appeal arises from the grant of summary judgment against Herbert A. Graham ("Plaintiff") in favor of the Archdiocese of St. Louis and Archbishop Rigali (collectively, "Archdiocese").¹ The trial court certified that its November 22, 2006 "Order and Final Judgment as to Defendants Archdiocese and Archbishop Rigali" constituted a final judgment as to the claims decided therein and that there was no just reason for delay, pursuant to Rule 74.01(b).² Finding no error, we affirm.

*461 I. Background

Plaintiff, born on July 29, 1972, alleges that between 1983 and 1986 he was repeatedly sexually abused by a Catholic Priest, Father Michael McGrath ("Priest"). On July 8, 2003, Plaintiff filed a ten-count petition against Archdiocese and Priest. Nine of the counts were pled against Archdiocese and one count was pled solely against Priest.³ Archdiocese moved for summary judgment, arguing that all of Plaintiff's claims were time barred under the statute of limitations.⁴

Plaintiff alleges that Priest fondled his leg and genitals, kissed, groped and caressed him. Plaintiff alleges that these acts of abuse frequently occurred when Priest took him and other boys on "fun outings," like go-carting and visiting a local frozen custard store. According to Plaintiff, Priest allowed Plaintiff to drive during these outings, even though Plaintiff

was underage. Plaintiff alleges that some of the sexual abuse occurred while Plaintiff was driving. Plaintiff states that Priest did not physically hurt Plaintiff at the time of the alleged molestations.

While Plaintiff has admitted that he always had memory of the events of abuse, Plaintiff avers he did not always understand that these acts constituted sexual abuse. Plaintiff's expert witness testified in a supplemental affidavit that Plaintiff's process of understanding that he was abused occurred sometime between 1995 and 1998. In 1995 and 1996, Plaintiff informed his mother, his then-wife, and a friend about the acts of sexual abuse. In 1998, Plaintiff confronted Priest regarding the past incidents of sexual abuse and asked him "if you claim to love us kids, why did you do things to hurt us?" Priest responded by stating that he loved Plaintiff and would never hurt him.

In February 1999, Plaintiff contacted an attorney regarding his sexual abuse claim against Priest. However, approximately seven months thereafter, Plaintiff had a motorcycle accident which caused him to suffer a traumatic brain injury, leaving him comatose for over a month.

In 2005, the trial court granted Archdiocese's motion for summary judgment in part, holding that all but one of Plaintiff's claims were time barred by the statutes of limitations. *See* Section 516.100 RSMo 2000⁵ and Section 516.120(4). The trial court held that the remaining claim, Plaintiff's cause of action under Count I for Child Sexual Abuse, was governed by a separate statute of limitations and it was not clear based on the record whether this claim was time barred. *See* Section 537.046.

*462 Archdiocese then filed a motion for summary judgment on the remaining Count I of Plaintiff's petition and the trial court granted this motion on November 1 2006, holding that Plaintiff's claim under Count I for child sexual abuse was time barred under Section 537.046.

In August 2006, Plaintiff submitted a motion for reconsideration of the trial court's August 2005 Order based upon *Powel v. Chaminade College Preparatory, Inc.*, 197 S.W.3d 576 (Mo. banc 2006). On November 22, 2006, the trial court denied Plaintiff's motion for reconsideration and issued its Order and Final Judgment as to the Archdiocese under Rule 74.01(b).

Discussion

Our review of a summary judgment is essentially *de novo*. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993). We view the evidence and all reasonable inferences in the light most favorable to the party against whom judgment was entered. *Id.* Summary judgment is appropriate when there exist no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Rule 74.04(c).

In his first three points on appeal, Plaintiff argues that the trial court's granting of summary judgment on the grounds that Plaintiff's claims were barred by the statute of limitations pursuant to Section 516.100 and Section 516.120 erroneously violated recent Supreme Court precedent, *Powel v. Chaminade*. We disagree.

Section 516.120 governs all of Plaintiff's claims against Archdiocese, except for Plaintiff's cause of action under Count I for Child Sexual Abuse. Section 516.120(4) provides that an action "for any other injury to the person or rights of another, not arising on contract and not herein otherwise enumerated" must be brought within five years of when the cause of action accrues. When a person's cause of action accrues when they are under the age of twenty one years, the statute of limitations does not begin to run until that person reaches the age of twenty one years. Section 516.170.

Although the parties agree that the statute of limitations was tolled until Plaintiff reached the age of twenty one, they disagree about when the Plaintiff's cause of action accrued. Specifically, the parties disagree as to when Plaintiff's damages were capable of ascertainment. A cause of action does not necessarily accrue at the time of the acts giving rise to it, "but when the damage resulting therefrom is capable of ascertainment, and if more than one item of damage, then the last item, so that all resulting damage may be recovered and full and complete relief obtained." Section 516.100. Recently, the Missouri Supreme Court clarified when damages are "capable of ascertainment" under Section 516.100. *Powel*, 197 S.W.3d at 584–85.

In *Powel*, the Missouri Supreme Court explained that, in determining when damages are capable of ascertainment, "the issue is not when the injury occurred, or when plaintiff subjectively learned of the wrongful conduct and that it caused his or her injury, but when a reasonable person would

have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages.” *Id.* at 584. Although *Powel* specifically dealt with a victim of childhood sexual abuse whose memory was repressed, its holding that “the capable of ascertainment standard is an objective one” nevertheless applies here and governs our interpretation of “capable of ascertainment” under Section 516.100. *Id.* at 585.

***463** Plaintiff argues that his damages were not capable of ascertainment until 1998 or thereafter because a reasonable person in Plaintiff’s position could not have ascertained his injury at any time prior to 1998. To support this argument, Plaintiff states that, despite knowledge of the wrongful acts, he was not aware that he had been injured by the acts of Priest until 1998 or thereafter. However, the issue is not when a plaintiff is *subjectively* aware of his injury; subjective awareness of damages does not resolve the question of when those damages were *objectively* capable of ascertainment. See *Powel*, 197 S.W.3d at 584. While a child victim may be unable to immediately recognize such harm, we fail to see how this inability prevents an adult with memory of the events of abuse from being on notice that harm may have occurred. See *Id.*

As additional support for his argument that damages were not capable of ascertainment until 1998, Plaintiff points to his expert witness’ testimony that Plaintiff’s process of coming to an understanding that he was abused took place between 1995 and 1998. First, we note that Plaintiff again seeks to employ a subjective standard to determine when damages are capable of ascertainment. However, the Missouri Supreme Court specifically rejected such an approach in favor of an objective reasonable person standard. *Powel*, 197 S.W.3d at 584. In addition, because “all possible damages do not have to be known, or even knowable, before the statute accrues,” the date Plaintiff completed his psychological process of uncovering is irrelevant. *Id.* (quoting *Klemme v. Best*, 941 S.W.2d 493, 497 (Mo. banc 1997)).

Under *Powel*, damages are capable of ascertainment when “the evidence [is] such to place a reasonably prudent person on notice of a potentially actionable injury.” *Powel*, 197 S.W.3d at 583 (quoting *Business Men’s Assur. Co. of America v. Graham*, 984 S.W.2d 501, 507 (Mo. banc.1999)). In 1995, Plaintiff had both knowledge of the acts constituting sexual abuse, and was at the very least beginning to understand that he was a victim of sexual abuse. Therefore, Plaintiff had “‘reason to question’ defendant’s conduct” and “information sufficient ‘to place a reasonably prudent person on notice of

a potentially actionable injury.’ ” *Id.* at 584. Further, between 1995 and 1996, Plaintiff informed his mother, wife, and a friend of the facts underlying his child sexual abuse claim.⁶ The fact that Plaintiff, for the first time, made the decision to confide in his loved ones about the events of abuse in 1995 and 1996 demonstrates that the evidence was sufficient at this time “to place a reasonably prudent person on notice of a potentially actionable injury.” *Id.*

In 1995 and 1996, Plaintiff had memory of the acts constituting sexual abuse, he was beginning to understand that he was a victim of sexual abuse, and he confided in his loved ones about these acts. These facts show that the evidence was then sufficient to put a reasonable person on notice that “an injury and substantial damages may have occurred;” therefore, Plaintiff’s damages were capable of ascertainment in 1996 at the latest. *Powel*, 197 S.W.3d at 584. Because Plaintiff filed his claim more than five years later in 2003, his causes of action against Archdiocese are barred by the statute of limitations. Section 516.120(4). Points one through three are denied.

***464** In his fourth point on appeal, Plaintiff argues that the statute of limitations did not begin to run until after his confrontation with Priest in 1998 because Priest’s response during this confrontation constituted his last bad act. We are unable to find any authority to support this argument that the statute of limitations did not begin to run until after Priest denied hurting Plaintiff. As explained above, because Plaintiff filed his claim in 2003, more than five years after his damages were capable of ascertainment, his causes of action against Archdiocese are barred by the statute of limitations. Point denied.

In his fifth point on appeal, Plaintiff argues that his claims were not barred by the statute of limitations because Plaintiff was mentally disabled from the years 1999 until 2003 and so the statute of limitations was tolled under Section 516.170. We disagree.

To avoid the statute of limitations, a plaintiff bears the burden of showing that he strictly comes within a claimed exception. *Bulter v. Mitchell–Hugeback, Inc.*, 895 S.W.2d 15, 19–20 (Mo. banc.1995). The statutes of limitations are favored in the law and so any exceptions must be strictly construed, even in cases of hardship. *Chambers v. Nelson*, 737 S.W.2d 225, 227 (Mo.App. E.D.1987).

We first address Plaintiff's tolling argument as it applies to all of his claims except Count I for Child Sexual Abuse, which is governed by a special statute of limitations. See Section 537.046. Section 516.170 tolls the statute of limitations only when the plaintiff was mentally incapacitated "at the time the cause of action accrued." As stated by the trial court, "[t]he plain import of such language is that the tolling provision will not apply at all if the person is not mentally incapacitated at the time his action accrues, even though he might later become incapacitated before the limitations period has yet fully run or expired." Plaintiff admits that his cause of action accrued prior to his mental incapacitation. Because Plaintiff admittedly was not mentally incapacitated "at the time the cause of action accrued," the tolling provision of Section 516.170 does not apply.

Plaintiff relies on *Kellog v. Kellog*, 989 S.W.2d 681 (Mo.App. E.D.1999), to support his argument that Section 516.170 tolled the statute of limitations governing his cause of action. In *Kellog*, the plaintiff alleged that he was a hemophiliac and that his stepfather, the defendant, sent him outside to get firewood where he slipped on ice and fell. *Id.* at 683. During treatment for injuries he sustained from the fall, the plaintiff suffered an infection which required amputation of his leg. *Id.* at 683. The plaintiff alleged that the emotional trauma he experienced as a result of the amputation rendered him mentally incapacitated. *Id.* at 686. This court held that the plaintiff did not raise a genuine issue of material fact that the resulting emotional trauma constituted mental incapacitation under Section 516.170. *Id.* at 687. Here, Plaintiff argues that because the plaintiff in *Kellog*'s cause of action accrued when he sustained the injury to his leg, and thus before the amputation and resulting emotional trauma, this Court contemplated that Section 516.170 applies to claims brought by mentally incapacitated individuals who become incapacitated after their claim accrued. We find this argument unpersuasive. *Kellog* did not hold that Section 516.170 tolls the statute of limitations on claims brought by mentally incapacitated individuals who become incapacitated after their claims accrued. Moreover, *Kellog* is factually inapposite. *Kellog* involved a situation where the plaintiff alleged that the main injury complained of caused the emotional trauma *465 that rendered him mentally incapacitated. Here, Plaintiff did not claim that the main injury complained of, the child sexual abuse, caused his motorcycle accident.

The United States Court of Appeals for the Eighth Circuit recently addressed this issue under a similar disability tolling

statute. *Pecoraro v. The Diocese of Rapid City*, 435 F.3d 870 (8th Cir.2006). In *Pecoraro*, the plaintiff's cause of action for child sexual abuse against a diocese accrued in January 2001, but the plaintiff did not file his claim until November 2004, after the three year South Dakota statute of limitations had expired. *Id.* at 872–74. The plaintiff argued that the statute of limitations should be tolled under the South Dakota tolling statute because he was mentally ill from 2003 to 2004. *Id.* at 876. The South Dakota tolling statute, like Section 516.170, only tolls the statute of limitations for mental illness when the person was mentally ill "at the time the cause of action accrued." *Id.* (quoting Section 15–2–22 S.D. Codified Laws). The Eighth Circuit rejected Plaintiff's argument that his subsequent mental illness tolled the statute of limitations because he was not mentally ill when his cause of action accrued. *Id.* The Court explained that because the statute plainly states that it applies to plaintiffs who were mentally ill when their cause of action accrued, "the claim's accrual date is the relevant time for determining whether one is mentally ill" and any subsequent mental illness is irrelevant. *Id.*

Plaintiff next contends that such an interpretation of Section 516.170 violates the Missouri Constitution by arbitrarily denying mentally incapacitated persons fair access to the courts based upon the date the plaintiff becomes incapacitated. However, the Missouri Supreme Court has previously held that Section 516.170 does not unfairly deny access to the mentally incapacitated. *Wheeler v. Briggs*, 941 S.W.2d 512, 515 (Mo. banc.1997). The court in *Wheeler* found that because the constitutional right to access the courts simply guarantees the "right to pursue in the courts the causes of action the substantive law recognizes," and because it is the practical difficulties associated with a mental disability that prevents access to the courts rather than any legal prohibition, Section 516.170 does not interfere with the constitutional right of access to the courts. *Id.* (quoting *Adams v. Children's Mercy Hospital*, 832 S.W.2d 898, 906 (Mo. banc.1992)).

Plaintiff also argues that the trial court erred in finding that the tolling exception in Section 516.170 does not apply to the statute of limitations governing Plaintiff's cause of action under Count I for child sexual abuse. Plaintiff's claim under this count is governed by Section 537.046, which establishes a separate statute of limitations for childhood sexual abuse claims.⁷ *466 The trial court ruled in its November 1, 2006 order that this claim was time barred as the disability tolling provision of Section 516.170 did not apply to causes of action falling outside that chapter, including the childhood sexual abuse statute found in Section 537.046.

Section 516.170 specifically states that it only applies to toll the statute of limitations specified in sections 516.100 through 516.370. Section 516.300 further clarifies that 516.170 does not apply to statutes of limitations found outside of that chapter as it states that “the provisions of sections 516.010 to 516.370 shall not extend to any action which is or shall be otherwise limited by any statute; but such action shall be brought within the time limited by such statute.” Therefore, the provisions of Section 516.170 do not apply to Plaintiff’s Count I for child sexual abuse because that cause of action is governed by Section 537.046, a special statute of limitations that is not specified in sections 516.100 through 516.370. Point denied.

In his sixth point on appeal, Plaintiff argues that the trial court erred in granting summary judgment on Plaintiff’s claim that Archdiocese engaged in fraud that prevented Plaintiff from discovering his cause of action. We disagree.

“There can be no fraudulent concealment that will prevent the running of the statute of limitations where the plaintiff knows of the cause of action or there is a presumption of such knowledge.” *Doe v. O’Connell*, 146 S.W.3d 1, 4 (Mo.App.

E.D.2004) (quoting *Hasenyager v. Bd. Of Police Comm’rs. of Kansas City*, 606 S.W.2d 468, 471 (Mo.App. W.D.1980)). Because Plaintiff admits that he always remembered the events constituting abuse, there could be no fraudulent concealment. As stated by the trial court “because the facts in the summary judgment record leave no doubt that Plaintiff was aware of and always remembered the acts of abuse by Father McGrath, it is clear as a matter of law that such alleged ‘fraud’ cannot apply to toll or extend the five year limitations period.” Point denied.

II. Conclusion

The judgment of the trial court is affirmed.

CLIFFORD H. AHRENS, J.

GLENN A. NORTON, J., Concur.

All Citations

243 S.W.3d 459

Footnotes

- 1 Archbishop Rigali was sued only in his representative capacity and not in any personal capacity. On January 26, 2004, Archbishop Burke was installed as Archbishop of St. Louis. Archbishop Burke succeeds Cardinal Justin Rigali, who was installed as Archbishop of Philadelphia on October 7, 2003.
- 2 “When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may enter a judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay.” Rule 74.01(b).
- 3 The nine counts pleaded against Archdiocese include: Count I—Child Sexual Abuse and/or Battery; Count II—Breach of Fiduciary Duty; Count III—Fiduciary Fraud and the Conspiracy to Commit Fiduciary Fraud; Count IV—Fraud and Conspiracy to Commit Fraud; Count V—Intentional Infliction of Emotional Distress; Count VII—Negligence, Count VIII—Vicarious Liability (Respondeat Superior); Count IX—Negligent Supervision, Retention and Failure to Warn; and Count X—Intentional Failure to Supervise Clergy. Counts I, II, III, IV and VII were pleaded against all Defendants. Counts V, VIII, IX and X were pleaded solely against Archdiocese. Count VI was pleaded only against Priest.
- 4 In addition, Archdiocese argued that summary judgment was proper because all of Plaintiff’s claims, except Count X, failed to state claims upon which relief can be granted against Archdiocese. The trial court did not decide this issue.
- 5 All further statutory references are to RSMo 2000, unless otherwise indicated.
- 6 We note that the record does not reveal whether Plaintiff characterized the acts as sexual abuse in these conversations. However, the mother, friend, and wife understood that Plaintiff was describing acts which constituted sexual abuse.
- 7 Plaintiff was 30 years old when this suit was filed.
Section 537.046 has been revised. See Section 537.046 RSMo Cum.Supp.2004. The version of Section 537.046 applicable to this case states:
As used in this section, the following terms mean:
(1) “Childhood sexual abuse”, any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of eighteen years and which act would have been a violation of section 566.030, 566.040, 566.050, 566.060, 566.070, 566.080, 566.090, 566.100, 566.110, or 566.120, RSMo, or section 568.020, RSMo;

(2) "Injury" or "illness", either a physical injury or illness or a psychological injury or illness. A psychological injury or illness need not be accompanied by physical injury or illness.

2. In any civil action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be *within five years of the date the plaintiff attains the age of eighteen or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever later occurs.*

3. This section shall apply to any action commenced on or after August 28, 1990, including any action which would have been barred by the application of the statute of limitation applicable prior to that date. *Id.* (emphasis added).

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299 S.W.3d 704
Missouri Court of Appeals,
Eastern District,
Division Four.

Timothy P. DEMPSEY, Appellant,
v.

Father Robert JOHNSTON, Roman Catholic
Archdiocese of St. Louis, et al., Respondents.

No. ED 92624.

|
Oct. 27, 2009.

|
Application for Transfer to Supreme Court
Denied Dec. 7, 2009.

|
Application for Transfer Denied
Jan. 26, 2010.

Synopsis

Background: Former altar boy, who allegedly was sexually abused by priest, brought action against priest and archdiocese. The Circuit Court, City of St. Louis, David L. Dowd, J., granted summary judgment in favor of priest and archdiocese. Former altar boy appealed.

The Court of Appeals, Roy L. Richter, J., held that former altar boy's claims were capable of ascertainment, and thus limitation periods began to run, when former altar boy reached 21 years of age and tolling of claims ended.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

Attorneys and Law Firms

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Edward M. Golderhersh, Bernard C. Huger, David P. Niemeier, St. Louis, MO, for Respondent.

Opinion

ROY L. RICHTER, Judge.

Timothy Dempsey ("Plaintiff") appeals the trial court's grant of summary judgment in favor of the Roman Catholic Archdiocese of St. Louis ("Archdiocese") and Father Robert Johnston ("Priest"). Finding no error, we affirm.

I. BACKGROUND

Plaintiff, born on March 18, 1964, was an altar boy at Sacred Heart Parish in Valley Park, Missouri, where he served masses with Priest. Plaintiff alleges that Priest sexually abused him on four separate occasions between 1977 and 1978 when Plaintiff was thirteen to fourteen years old and in the eighth grade. Plaintiff claims that two incidents of abuse occurred at Priest's lake house in Hillsboro, Missouri, one at the Sacred Heart Parish Rectory, and another at a hotel during a road trip to Ft. Lauderdale, Florida. According to Plaintiff, the sexual abuse consisted of masturbation and oral sex.

Plaintiff did not reveal the abuse to anyone until he told his wife in November 2002. Plaintiff admits that he always remembered the abuse and knew it was wrong, but states he kept it secret because he was embarrassed, ashamed and scared, and did not think anyone would believe him.

On December 16, 2004, at age 40, Plaintiff filed a ten-count petition against the Archdiocese and Priest based on the sexual abuse he alleges occurred in 1977 and 1978.

In April 2007 the Archdiocese filed a motion to dismiss all counts against it except Count X, Intentional Failure to Supervise Clergy ("failure to supervise"). The trial court granted the motion in its entirety and left only the failure to supervise claim pending against the Archdiocese.

In April 2008, one year after it filed the motion to dismiss, the Archdiocese filed a motion for summary judgment regarding Plaintiff's remaining failure to supervise claim and argued that it was barred by the statute of limitations. Priest likewise filed a motion for summary judgment in April 2008 wherein he alleged that the applicable statute of limitations barred all of Plaintiff's claims against him.

On December 22, 2008, the trial court granted the Archdiocese's and Priest's motions for summary judgment on

the basis that Plaintiff's claims were barred by the statute of limitations.¹ Plaintiff appeals.

II. DISCUSSION

In his sole point on appeal, Plaintiff argues that the trial court erred in granting summary judgment for the Archdiocese and Priest based on the statute of limitations. We disagree.

Appellate court review of summary judgment is de novo. *ITT Commercial Fin. v. Mid-Am. Marine*, 854 S.W.2d 371, 376 (Mo. banc.1993). We view the evidence *706 and all reasonable inferences in the light most favorable to the party against whom judgment was entered. *Id.* Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

The statute of limitations is an affirmative defense, and a party who moves for summary judgment on that basis bears the burden of showing that the statute bars the plaintiff's claims. *Powel v. Chaminade Coll. Preparatory, Inc.*, 197 S.W.3d 576, 580 (Mo. banc 2006). "Where relevant facts are uncontested, the statute of limitations issue can be decided by the court as a matter of law." *Id.* at 585.

The parties do not disagree regarding the various statutes of limitation that apply to Plaintiff's claims, or that section 516.170 RSMo 2000² operated to toll Plaintiff's claims until he reached age twenty-one.³ They do dispute, however, when Plaintiff's causes of action began to accrue thereafter.

Section 516.100 provides that a cause of action accrues "when the damage resulting therefrom is sustained and is capable of ascertainment." In *Powel v. Chaminade*, the Missouri Supreme Court stated that damages are capable of ascertainment and the statute of limitations begins to run when "the evidence [is] such to place a reasonably prudent person on notice of a potentially actionable injury." 197 S.W.3d at 582. The Court emphasized that the test is an objective one and that the issue is "when a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages." *Id.* at 584.

Plaintiff does not proffer even a general timeframe during which he believes his injuries were capable of ascertainment. He essentially argues that, even though he

always remembered the abuse and knew it was wrong, he did not know he had suffered substantial injuries as a result. According to Plaintiff, embarrassment, fear, and confusion about the abuse "are not the kind of damages that would have put [P]laintiff on inquiry notice that he may have a legal claim against [Priest] or the Archdiocese." Plaintiff asserts that mere knowledge that an act of sexual abuse is wrong is insufficient to trigger the statute of limitations.

The Archdiocese and Priest argue that the statute of limitations began to run when Plaintiff turned twenty-one on March 18, 1985. They assert that, under *Powel's* objective standard, Plaintiff's damages were capable of ascertainment at that time because Plaintiff always remembered what had happened to him and knew it was wrong. According to Archdiocese and Priest, such circumstances were sufficient to place a reasonable person on inquiry notice of a potentially actionable injury.

We agree with Priest and the Archdiocese that Plaintiff's damages were capable of ascertainment when he reached age twenty-one. Unlike the plaintiff in *Powel*, Plaintiff does not allege repressed memory. *707 In his responses to the Archdiocese's requests for admission, Plaintiff admitted that he did not repress his memories of the abuse and that he has always remembered it. Plaintiff stated in his deposition testimony that he began avoiding Priest when he turned fifteen in order to protect himself from further abuse. Finally, Plaintiff indicated that he kept the abuse secret because he feared no one would believe him. Plaintiff's memories of the sexual abuse were sufficient to place a reasonably prudent person on inquiry notice of a potentially actionable injury. *See State ex rel. Marianist Province of U.S. v. Ross*, 258 S.W.3d 809, 811 (Mo. banc 2008) (stating that even though plaintiff did not remember the sexual details of the abuse, the conduct that he always remembered was sufficient to "place a reasonably prudent person on notice of a potentially actionable injury.").

Plaintiff attempts to distinguish his case from *Graham v. McGrath*, 243 S.W.3d 459 (Mo.App. E.D.2007) by positing that "evidence of disclosure to others" was crucial to *Graham's* holding. *Graham*, however, did not require disclosure to others in order to trigger the statute of limitations. *Graham* simply held that the statute of limitations began to run in 1995 when plaintiff began to have knowledge of the facts constituting the abuse and understood that he had been a sexual abuse victim. 243 S.W.3d at 463. That plaintiff disclosed the abuse in 1995 to his mother, wife and friend was

merely further evidence that plaintiff had, at that time, facts sufficient “to place a reasonably prudent person on notice of a potentially actionable injury.” *Id.*

Plaintiff has always had knowledge of the facts constituting the abuse and has always known that he was a sexual abuse victim. His damages, therefore, were sufficient to place a reasonably prudent person on notice of a potentially actionable injury. Section 516.170 operated to toll Plaintiff's claims until March 18, 1985 when he reached the age of twenty-one years, and at that point they became capable of ascertainment. Because Plaintiff did not bring suit until 2004, long after the applicable statutes of limitation had expired, the trial court did not err in granting the Archdiocese's and Priest's motions for summary judgment. Point denied.

III. CONCLUSION

The judgment is affirmed.

KURT S. ODENWALD, P.J., and GEORGE W. DRAPER, III, J., concur.

All Citations

299 S.W.3d 704

Footnotes

- 1 The trial court relied on the same facts and legal analysis in granting both the Archdiocese's and Priest's motions for summary judgment.
- 2 Unless otherwise indicated, all statutory references are to RSMo 2000.
- 3 The general five-year statute of limitations contained in section 516.120(4) applies to Plaintiff's claims for failure to supervise, breach of fiduciary duty, intentional infliction of emotional distress and negligence. Subsection (5) of that section imposes a ten-year statute of limitations on Plaintiff's two fraud claims. Finally, section 537.046.2 states that Plaintiff must bring his claim for childhood sexual abuse within ten years of attaining the age of twenty-one, or within three years of the date on which he discovers that his injuries were caused by sexual abuse, whichever later occurs.

Part C – Constitutional limitations on using personal identifying information in public reports

In re Fortieth Statewide Investigating Grand Jury, 197 A.3d 712 (2018).

Identifying information of sex abusers from statewide investigative grand jury should not be included in a public report on sex abuse in Pennsylvania Catholic Church.

197 A.3d 712
Supreme Court of Pennsylvania.

**IN RE: FORTIETH STATEWIDE
INVESTIGATING GRAND JURY**

No. 75, 77-82, 84, 86-87, 89 WM 2018

|
Argued: September 26, 2018

|
Decided: December 3, 2018

Synopsis

Background: Current and former **priests** petitioned for a due process remedy to secure their **constitutionally** guaranteed right to reputation, in light of a **grand jury** report concluding that **named** individuals perpetrated heinous criminal acts, but that no future criminal proceedings could likely be brought. The Supreme Court, 190 A.3d 560, concluded that the procedures in the **Investigating Grand Jury** Act did not provide adequate protection, ordered the temporary **redaction** of the **names** and identifying information, and directed additional briefing on the remedy issue.

Holdings: The Supreme Court, Nos. 75, 77-82, 84, 86-87, 89 WM 201877-82, 84, 86-87, 89 WM 2018, Todd, J., held that:

[1] **grand jury** could not be reassembled to hear additional testimony or to issue a supplemental report as a remedy;

[2] supervising judge was not authorized to conduct hearing to receive additional evidence and make findings of fact as a remedy; and

[3] **redactions** were required to be made permanent, as the only available remedy.

Redaction made permanent.

Baer, J., filed concurring opinion.

Dougherty, J., filed concurring opinion.

Saylor, C.J., filed dissenting opinion.

Procedural Posture(s): Preliminary Hearing or **Grand Jury**
Proceeding Motion or Objection.

West Headnotes (8)

[1] **Constitutional Law**

← Factors considered; flexibility and balancing

The amount of process which is due in a particular case is determined by application of a test which considers three factors: (1) the private interest affected by the governmental action, (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards, and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state. Pa. Const. art. I, § 1.

1 Cases that cite this headnote

[2] **Grand Jury**

← Nature and functions in general

The **investigating grand jury** process is solely a creature of statute, the **Investigating Grand Jury** Act, and, as such, the General Assembly has specified in detail therein a **grand jury's** duties and the procedures to be utilized in carrying out its designated tasks. 42 Pa. Cons. Stat. Ann. § 4541 et seq.

1 Cases that cite this headnote

[3] **Constitutional Law**

← Criminal Law

A court may not usurp the province of the legislature by rewriting the **Investigating Grand Jury** Act to add hearing and evidentiary requirements that **grand juries**, supervising judges, and parties must follow which do not comport with the Act itself, as that is not its proper role under the **constitutionally** established tripartite form of governance. 42 Pa. Cons. Stat. Ann. § 4541 et seq.

2 Cases that cite this headnote

[4] **Constitutional Law**

⚡ **Grand Jury**

Grand Jury

⚡ Conduct of proceedings in general

Investigating grand jury, which concluded that current and former **priests** perpetrated heinous criminal acts but that no future criminal proceedings could likely have been brought, could not be reassembled to hear additional testimony, to receive supplementary evidence, or to issue a supplemental report, and thus such procedure could not serve as a due process remedy to secure **priests'** constitutional right to reputation; **grand jury** disbanded upon completion of its report after its term was extended to statutorily permitted 24 months, and **grand jury** had no authority under **Investigating Grand Jury Act** to take any further official action after its term had expired. Pa. Const. art. 1, § 1;

42 Pa. Cons. Stat. Ann. § 4546.

1 Cases that cite this headnote

[5] **Constitutional Law**

⚡ Conduct of proceedings

Grand Jury

⚡ Conduct of proceedings in general

Supervising judge in **grand jury** proceedings was not authorized to conduct hearing to receive additional evidence and make findings of fact, and thus such procedure could not serve as a due process remedy to secure current and former **priests'** constitutional right to reputation, after **investigating grand jury** concluded in a report that **priests** perpetrated heinous criminal acts but that no future criminal proceedings could likely have been brought; **Investigating Grand Jury Act** did not authorize the procedure, and the procedure would have been fraught with problems rooted in nature and character of divergent types of evidence. Pa. Const. art. 1, §

1; 42 Pa. Cons. Stat. Ann. § 4552(b).

Cases that cite this headnote

[6] **Constitutional Law**

⚡ Judicial Authority and Duty in General

Where the judiciary has been statutorily enmeshed in a procedure which may result in deprivation of an individual's due process rights, the Supreme Court may take corrective measures pursuant to its inherent judicial authority to avoid the infliction of such harm. Pa. Const. art. 1, § 1.

Cases that cite this headnote

[7] **Grand Jury**

⚡ Presentments or reports to court in general

Redactions of **names** and identifying information of current and former **priests** in **investigating grand jury's** report were required to be made permanent, in order to protect **priests'** constitutional right to reputation, in light of report's conclusion that **priests** perpetrated heinous criminal acts but that no future criminal proceedings could likely have been brought; even though **redaction** may have been unsatisfying to public and victims of abuse detailed in report, other remedies offered by parties were not authorized by **Investigating Grand Jury Act**, and even alleged sexual abusers and those abetting them were guaranteed

constitutional rights. Pa. Const. art. 1, § 1; 42 Pa. Cons. Stat. Ann. § 4541 et seq.

Cases that cite this headnote

[8] **Grand Jury**

⚡ Presentments or reports to court in general

The supervising judge's limited review and approval of a **grand jury** report for public release gives it an imprimatur of official government sanction which carries great weight in the eyes of the public, and, thus, may compound the harm to a person's constitutionally protected right to reputation who is wrongly **named** therein. Pa. Const. art. 1, § 1.

Cases that cite this headnote

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SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE TODD

In this opinion, we consider the question left unanswered by our opinion of July 27, 2018 in these matters, *In re: 40th Investigating Grand Jury*, — Pa. —, 190 A.3d 560, 563 (2018) (“*Grand Jury I*”). Specifically, we address what, if any, due process remedy is presently available to Petitioners, who are former and current **priests** in various Catholic Dioceses throughout Pennsylvania specifically condemned in Report 1 of the **40th Investigating Grand Jury** (“Report 1”) as “predator **priests**,” to secure their **constitutionally** guaranteed right to reputation.¹ Pa. Const. art. I, § 1. For the reasons that follow, we conclude that we may not employ any of the remedies offered by the parties, and, thus, that we must make permanent the **redaction** of Petitioners’ identifying information from Report 1, which we previously ordered as an interim measure, as this is the only viable due process remedy we may now afford to Petitioners to protect their **constitutional** rights to reputation.

*715 I. Background

In our prior opinion authored by Chief Justice Saylor, we stressed that an individual’s right to his or her personal reputation was regarded by the framers of our organic charter as a fundamental individual human right — one of the “inherent rights of mankind.” *Grand Jury I*, 190 A.3d at 573.² For that reason, throughout our Commonwealth’s history, it has been accorded the same exalted status as other basic individual human rights, such as freedom of speech, freedom of assembly, and freedom of the press. Thus, as with all legal proceedings which affect fundamental individual rights, the judicial branch serves a critical role in guarding against unjustified diminution of due process protections for individuals whose right of reputation might be impugned.

We recognized that, in the context of **grand jury** proceedings under the **Investigating Grand Jury Act** (“Act”),³ a final pronouncement of that body in the nature of Report 1, wherein the **grand jury** found that **named** individuals perpetrated heinous criminal acts, but for which no future criminal proceedings can likely be brought, presents a substantial risk of impairment of those individuals’ right to their reputation. We perceived the gravity of this risk as arising out of the fact that a report such as Report 1 “will be seen as carrying the weight of governmental and judicial authority,” and the **grand jury** is regarded as “embodying the voice of the community” with respect to its specific findings. *Grand Jury I*, 190 A.3d at 573. Consequently, as the content of Report 1 is condemnatory of Petitioners, we concluded that principles of fundamental fairness demanded enhanced procedural protections be afforded Petitioners in order to safeguard their right to reputation.

We then proceeded to evaluate whether two procedures statutorily enumerated in the Act provide individuals in Petitioners’ situation with adequate due process protections for their reputational rights, and we ultimately concluded that they did not. We found the first procedure — the discretionary right of the supervising judge to allow **named** but nonindicted individuals to submit a written response to the report conferred by 42 Pa.C.S. § 4552(e)⁴ — to be inadequate, given that such a response would be hearsay, and, because of the voluminous size and scope of Report 1, there is a likelihood that, to a reader, the response would pale in significance to the overall report. Moreover,

because the report contains numerous allegations involving the reprehensible behavior of a multiplicity of individuals, we deemed the cumulative effect of those allegations as likely to inflame a reader's ire, and, thus, impede his or her capacity to evaluate the credibility of an individual's response.

We also determined that the second procedure available under the Act — its requirement, pursuant to ***716** 42 Pa.C.S. § 4552(b),⁵ that the supervising judge examine the report and determine if it was based on facts derived from the **grand jury investigation** and is supported by a preponderance of the evidence — provided insufficient due process protections to individuals **named** in the report. We found that such a preponderance-of-the-evidence standard was “best suited to adversarial proceedings where competing litigants present evidence to be weighed by a factfinder.” *Id.* at 574. We noted that a **grand jury** proceeding is not adversarial in nature, inasmuch as the Commonwealth controls the entirety of the process through which it, and only it, presents evidence, some of which, such as hearsay, may not be introduced in a traditional adversarial proceeding such as a trial. Moreover, such evidence is not subject to meaningful testing before the **grand jury**, through either cross-examination or the presentation of rebuttal evidence. Inasmuch as this review process by the supervising judge does not give **named** individuals an opportunity to respond to the **grand jury's** conclusions in “a meaningful way,” we concluded it provided inadequate due process protection for Petitioners. *Id.* at 575.

Given that there were divergent views among the Justices of this Court as to what remedy, if any, could safeguard Petitioners' due process rights, our Court allowed publication of Report 1, but also ordered the temporary **redaction** of Petitioners' **names** and other identifying information from the report in order to protect their right to reputation, pending oral argument before our Court, and disposition of the remedy question.⁶ In so doing, we explained that our Court has previously employed such an excisional remedy for an individual's identifying information, where an individual's right to reputation was imperiled by the outcome of a legal proceeding in which there was judicial involvement.

See id. at 577 (citing *Carlacci v. Mazaleski*, 568 Pa. 471, 798 A.2d 186 (2002)).⁷ We also directed additional briefing specifically focused on the question of remedy. A copy of Report 1 with Petitioners' **names** and other identifying information **redacted** (“Interim Report 1”) was

***717** released on August 14, 2018, and our Court held oral argument on the remedy issue on September 26, 2018.⁸

II. Arguments of the Parties

[1] We note, initially, that, despite our Court's request, neither party has directly addressed the extent and source of our Court's authority to fashion a judicial remedy in this situation. Petitioners presently argue that, in determining what procedural safeguards are appropriate in this instance, the three-part test derived from the United States Supreme

Court's decision in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), and recently utilized by our Court in *Bundy v. Wetzel*, — Pa. —, 184 A.3d 551 (2018), provides the general relevant guiding framework. These cases establish that the amount of process which is due in a particular case is determined by application of a test which considers three factors: “(1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state.” *Id.* at 557.

Regarding the first element of the *Mathews/Bundy* test, Petitioners underscore that their interest in their reputation is of the highest order, and, thus, worthy of maximal procedural protection against wrongful impairment, at least as rigorous as that afforded other interests in life or property. Petitioners characterize the risk of an erroneous deprivation of this interest, as “not just high, but certain.” Petitioners' Supplemental Brief at 8. In support of this claim, Petitioners cite to certain asserted factual errors in Report 1, such as an alleged confrontation of one of the Petitioners by a victim of claimed abuse when, in fact, the Petitioner had died almost a decade earlier, and they highlight the fact that other Petitioners **named** in the report would have been children at the time they allegedly abused victims, and, hence, could not have been ordained **priests**. Petitioners aver that, had they been able to offer evidence to the **grand jury**, these errors could have been avoided. Petitioners note that, even if the matter is remanded to a different supervisory judge, this would not completely cure the mistakes, as, while clearly erroneous material can be excised from the report, factual evidence that creates false and misleading impressions cannot be cured by a judge, given that he or she cannot add material to the record or the report. Petitioners seek to raise these

matters before the **grand jury** itself and to the supervising judge by presenting to both what they characterize as rebuttal and exculpatory evidence.

Petitioners perceive the administrative burden of providing additional due process as negligible, particularly when weighed against the fact that the Commonwealth itself has a compelling interest in safeguarding the **grand jury** process and ensuring that it produces a truthful and accurate report, as well as ensuring that it “functions fairly and with due regard for the rights of the accused.” *Id.* at 12.

Petitioners emphasize that other states provide extensive due process protections for those who will be **named** by a **grand jury** report, and they suggest that we should follow their lead in adopting some, or all, of these protections. For instance, regarding public officials, New York allows *718 those officials to testify before the **grand jury**, and guarantees them the right to file a response to the **grand jury** report. Moreover, the supervising judge may direct the **grand jury** to take additional testimony or seal the record if he or she determines the report is not supported by a preponderance of evidence, which, significantly, must be both credible and legally admissible. *Id.* at 24 (citing N.Y. Crim. Proc. Law § 190.85).

As another example of enhanced procedural safeguards, Petitioners cite Alaska's procedure where the **grand jury** must remain in session while the supervising judge reviews the report and the record of the proceedings and makes his or her own findings of fact. Additionally, the supervising judge is statutorily required to determine whether the report will “improperly infringe” on an individual's **constitutional** right to privacy, and, if the judge determines that it does, he or she must return the report to the **grand jury** which may conduct further proceedings to address the judge's concern. *Id.* at 27 (citing Alaska R. Crim. P. 6.1(b)).

Petitioners further highlight that, in at least 18 other states, **grand juries** are prohibited from **naming** individuals in a report unless the conduct alleged in the report results in criminal charges being filed against the individuals.⁹ According to Petitioners, the filing of criminal charges guarantees to the **named** individual a full panoply of due process protections, allowing that individual, either prior to a trial or at a trial, to challenge the evidence, cross-examine witnesses, and present evidence establishing his or her innocence. Because Pennsylvania has no such requirement, individuals such as Petitioners may be **named** as participants

in criminal activity and, indeed, as here, be branded as sexual predators, but never have the opportunity at any subsequent judicial proceedings to contest the **grand jury's** conclusions in this regard. For this reason, Petitioners argue that, unlike in a criminal proceeding, for them the “critical” phase of the **investigating grand jury** process occurs when the **grand jury** itself receives evidence, and when the supervising judge reviews it, inasmuch as this is where the factual record is created and evaluated. Petitioners assert that, just as a criminal defendant is entitled to due process at critical stages of a criminal trial, they are entitled to due process at these two critical phases of the **grand jury** proceedings.

The nature of this due process, in Petitioners' view, consists, first, of the right to appear before the supervising judge and to be heard, which they claim includes, at a minimum, the right to discovery of the Commonwealth's evidence and to make challenges thereto, the right to cross examine witnesses, the right to make their own counseled presentation of evidence, and the right to provide rebuttal or exculpatory evidence. Secondly, with regard to the **grand jury** itself, Petitioners seek the right to appear before that body and to provide rebuttal and exculpatory evidence.¹⁰ Petitioners express confidence that the supervising judge can implement these procedural safeguards as part of his or her supervisory role.

However, Petitioners also aver that they have been irrevocably tainted by public statements of the Attorney General regarding *719 their pursuit of this litigation. Petitioners specifically reference the following public pronouncements of the Attorney General: (1) his letter to Pope Francis asking for his intervention to “direct church leaders to follow the path you charted at the Seminary in 2015 and abandon their destructive efforts to silence the survivors,” Petitioners' Supplemental Brief at 46 (quoting Exhibit 2 to Petitioners' Brief, Letter to Pope Francis, 7/25/2018)); (2) statements made at a press conference in which the Attorney General: described Petitioners as having “concealed their identities through sealed court filings;” accused them of seeking to “bury the sexual abuse by **priests** upon children, and cover it up forever;” observed that, while the **redactions** are representative of only “a very small fraction of the predator **priests named** by this **grand jury**, no story of abuse is any less important than another;” and (3) the fact that when asked to comment about Petitioners' claims of inaccuracies in the report, the Attorney General answered by stating that, in evaluating these claims, the sources should be considered, i.e., “who they are and ... their backgrounds.” *Id.* at 47-48 (quoting Transcript of Attorney General Press Conference,

8/14/18).¹¹ Petitioners allege that they have already suffered damage to their reputation from these statements, and that any additional **grand jury** proceedings would be tainted such that it would be impossible for them to get unbiased consideration of the evidence which they wish to present. Thus, Petitioners argue that, because of the impossibility of receiving “[a] fair ‘redo’ ” before a new **grand jury**, as an alternative form of relief, they ask that Interim Report I be adopted by our Court as the final report. *Id.* at 53-54.

The Commonwealth responds by asserting that procedures are available under the Act to protect the due process rights of Petitioners, while, at the same time, vindicating the public's right to identify and address abuses committed by societal institutions. The Commonwealth suggests that the **grand jury** may be called back for the limited purpose of considering factual disputes such as the ones Petitioners highlight in their brief,¹² or, alternatively, a new **grand jury** may be empaneled to consider these matters, a process which the Commonwealth suggests is commonplace. The Commonwealth argues that, under either of these procedures, the **named** individuals could be given the right to testify before the **grand jury** and, also, to submit evidence “as the jurors deem appropriate.” Commonwealth Supplemental Brief at 11.

After the **grand jury** has received this additional evidence regarding the disputed issues, it could then resubmit the report to the supervisory judge who could then, in turn, distribute the report to Petitioners for them to highlight errors or inaccuracies, or make argument regarding whether the report should be published. The Commonwealth adheres to its prior position, however, that the role of the supervisory ***720** judge should be limited to reviewing the extant **grand jury** record, as supplemented by additional testimony and evidence of Petitioners, and that the supervising judge should not make new credibility determinations or findings of fact. The Commonwealth reasons that allowing the supervisory judge to assume a fact-finding role would be improper since he or she would be making credibility determinations and evaluating the evidence based on a cold record, not on the live testimony of witnesses.

The Commonwealth proffers that, once Petitioners have been given the opportunity to testify before the **grand jury** and to submit supplemental evidence to it, the supervising judge may then review the report, and, if Petitioners still have objections, he or she may rule on them utilizing the preponderance of

the evidence standard set forth in ***721** Section 4552(b). If the supervising judge deems the report to be supported by the **grand jury** record, he or she should approve publication, and Petitioners may still file a response as allowed by

***722** Section 4552(e). Although conceding the right to file such a response is discretionary with the supervising judge, the Commonwealth points out that a judicial decision thereon can be reviewed by an appellate court under an abuse of discretion standard. If the supervising judge deems the report unsupported, then he or she may return the report to the **grand jury**, which may then modify the report or elect to withdraw it altogether, and, in either case, Petitioners' identities will remain protected.

The Commonwealth claims that, if its suggested procedures are followed, individuals' **names** will not be released in a **grand jury** report unless there has been a judicial finding that the **grand jury** record supports their identification, and only after they have been given a full and fair opportunity to present evidence that they did not commit the acts detailed in the report. The Commonwealth maintains that such procedures provide **constitutionally** adequate due process for Petitioners, while still permitting the citizen **grand jury** to perform its traditional role of a “watchdog” over the conduct of institutions. Commonwealth Supplemental Brief at 19.

Additionally, the Commonwealth highlights the fact that it is not only **grand juries** that issue **investigative** reports; rather, such reports are also routinely issued by other officials within the executive branch such as the Auditor General and Inspector General, and, frequently, those reports focus criticism on individuals for their conduct as public officials. Likewise, certain other groups within these branches, such as committees of the General Assembly, or the interbranch commissions utilized by our Court, are tasked with **investigating** a wide variety of matters arising out of the operation of governmental and related public bodies, and the Commonwealth cautions that their reports sometimes, by necessity, identify and criticize specific officials within those organizations as having been responsible for causing, or greatly contributing to, the specific problems that are the subject of the report. The Attorney General avers that such identification is frequently necessary in order for the public to fully understand and seek remedial measures to address official wrongdoing. The Attorney General suggests that if any of Petitioners' legal positions are adopted, it would interfere with the **investigative** functions of these groups to

the degree that it would prevent them from fulfilling their core missions.¹³

*721 III. Analysis

[2] [3] We begin our analysis by observing that the **investigating grand jury** process is solely a creature of statute, the **Investigating Grand Jury Act**, and, as such, the General Assembly has specified in detail therein a **grand jury's** duties and the procedures to be utilized in carrying out its designated tasks. The Act is therefore the product of a deliberative legislative process whereby various policy questions regarding the empaneling of an **investigative grand jury**, the duration of its existence, the manner in which it may receive and consider evidence, the circumstances under which it may issue a report, and the conditions under which that report may be disseminated to the public were carefully considered and evaluated by that lawmaking body. Accordingly, the various provisions of the Act governing the term of existence and operation of the **grand jury** — including the **grand jury's** receipt and consideration of evidence, its preparation of a report, and the role of the supervising judge — reflect the legislature's ultimate policy decisions on those matters. See 42 Pa.C.S. §§ 4545, 4546, 4548, and 4552. In responding to the present **constitutional** challenge, our Court may not usurp the province of the legislature by rewriting the Act to add hearing and evidentiary requirements that **grand juries**, supervising judges, and parties must follow which do not comport with the Act itself, as that is not our proper role under our **constitutionally** established tripartite form of governance. See, e.g., *Commonwealth v. Hopkins*, 632 Pa. 36, 117 A.3d 247, 262 (2015) (declining to rewrite a mandatory sentencing statute which was **constitutionally** infirm to supply missing components which would rectify the **constitutional** violation, inasmuch as curing statutory omissions is a legislative function); *Castellani v. Scranton Times, L.P.*, 598 Pa. 283, 956 A.2d 937, 950 (2008) (refusing to engraft upon the Shield Law an exception to protection for reporter sources since it was not authorized by the statutory text).

[4] It is for this reason that we must reject the Commonwealth's suggestion that the **investigating grand jury** in this matter could be recalled to hear testimony and receive evidence from Petitioners. Putting aside the logistical difficulties attendant to such a proposal — such as whether

the original **grand jurors** and alternates are available to serve — such an extraordinary measure is not authorized by the plain text of the Act. Section 4546 of the Act specifies that an **investigating grand jury** “shall ... serve for a term of 18 months,” unless, by majority vote of its members at the expiration of its term, it determines that “it has not completed its business.” 42 Pa.C.S. § 4546. However, “no such **investigating grand jury** term shall exceed 24 months from the time it was originally summoned.” *Id.* Here, the **grand jury** was convened in May 2016, and, after its term was extended to the statutorily permitted 24 months, it disbanded upon the completion of its report in April 2018. Thus, given that the **grand jury's** term has expired and that it has been disbanded, we conclude that the **40th Statewide Investigating Grand Jury** has no authority under the Act to take any further official action. Our careful review of the Act reveals that it contains no allowance for this **grand jury** to be reassembled, to hear additional testimony, to receive supplementary evidence, *722 or to issue a supplemental report.¹⁴ Moreover, as discussed, the **investigating grand jury** is a distinctly statutory creation. We are unaware of any authority, nor has the Commonwealth identified any, which would allow this Court to craft a judicial remedy that re-panels the **grand jury**, requires it to take additional evidence, and to author a second supplemental report, contrary to the express legislative design of the Act.

[5] Similarly, the remedy proffered by Petitioners and endorsed by the dissent — that the supervising judge conduct a hearing to receive evidence from Petitioners regarding disputed matters in the report and then make findings of fact based on his evaluation of the strength of that evidence as compared to that which the **grand jury** received — fares no better. First, it is not authorized by the Act. The limited authority of the supervising judge to review the **grand jury** report set forth in Section 4552(b) cannot be interpreted in such an expansive fashion. Specifically, this section authorizes the supervising judge only to “examine” the report and the record of the proceedings and determine “if the report is based upon facts received in the course of an **investigation** authorized by this subchapter and is supported by the preponderance of the evidence.” 42 Pa.C.S. § 4552(b). The supervising judge's role under this statutory provision is, thus, strictly circumscribed to conducting a judicial review of the report and the record as developed before the **grand jury**. It plainly does not authorize the supervising judge to conduct his own *de novo* review, let alone receive additional evidence.

Moreover, such a process would be fraught with problems rooted in the nature and character of the divergent type of evidence the supervising judge would be forced to evaluate. The **grand jury** heard, and considered firsthand, the testimony of the Commonwealth's witnesses and the other evidence on which it based its report, and, after considering it, made its own credibility determinations, and drew factual conclusions from that evidence. By contrast, at the hearing proposed by Petitioners, the supervising judge, who was not present in the **grand jury** room, would be forced to evaluate any new evidence against a cold record, without having heard the testimony of the Commonwealth's witnesses firsthand.

Additionally, as Petitioners have acknowledged, when this evidence was presented to the **grand jury**, there was no cross-examination of witnesses or presentation of rebuttal evidence permitted, and the Commonwealth exclusively controlled the manner of its presentation to the jury. Furthermore, the **grand jury** was permitted to hear and consider some evidence that was not subject to the normal safeguards of reliability afforded by the Rules of Evidence. By contrast, at the proposed hearing before the supervising judge, the Commonwealth presumably would be free to challenge Petitioners' evidence via cross-examination, or object to its entry under the Rules of Evidence, and to present its own rebuttal evidence. This would create a marked imbalance whereby Petitioners' evidence would be subjected to testing through an adversarial process, whereas the Commonwealth's evidence would not. Consequently, the supervising judge would have to evaluate evidence that does not stand on an equal footing in terms of reliability. This situation would *723 raise its own due process issues, as well as implicate equal protection concerns. While conceivably the Commonwealth could be permitted to recall the witnesses it offered before the **grand jury** and re-present the evidence it introduced, this would undermine or even nullify the **grand jury** proceedings, as the supervising judge would become the ultimate factfinder, not the **grand jury**, contrary to the legislative design of the Act.

Finally, even ignoring these substantial obstacles, Petitioners have offered no authority which would allow us to order, as a judicial remedy, further proceedings before the supervising judge. We conclude that we are unable to do so.

[6] Where the judiciary has been statutorily enmeshed in a procedure which may result in deprivation of an individual's due process rights, we may take corrective measures pursuant

to our inherent judicial authority to avoid the infliction of such harm. As we recognized in *Carlacci, supra*, this authority derives from a bedrock principle of our legal system which has undergirded it since its inception: "[w]here there is a right, there is a remedy." *Carlacci*, 798 A.2d at 190 & n.9.

In that case, we addressed the question of what judicial remedy was available to avoid potential harm to an individual's reputation occasioned by the issuance of a temporary PFA order, which resulted from an *ex parte* judicial finding that allegations of abuse made in a PFA petition were credible, but no formal adversarial hearing was ever subsequently held to determine the merits of those allegations. Thus, even though the respondent was never given the opportunity to cross-examine the witness or witnesses against him, or to introduce rebuttal evidence, and as no final order was ever entered against him, the PFA Act provided no mechanism by which the respondent could seek to have the records of the preliminary PFA proceedings purged from the judicial system. Nevertheless, given the fact that the statutory scheme afforded the respondent no meaningful opportunity to protect his reputation from an erroneous accusation of abuse, and in recognition of the paramount significance of the individual right to reputation, we ordered the PFA records to be expunged. That is, we prevented the infliction of reputational harm resulting from the **constitutionally**-infirm process.

However, while we may ameliorate the potential damage to an individual's **constitutionally** protected right to reputation by expunging records of a judicially supervised proceeding deemed infirm, in this case, regarding the **Investigating Grand Jury** Act, we conclude it is not within our purview to wholly recraft a purely statutory process and compel the parties to reopen and participate anew in an extra-statutory proceeding. Simply stated, we conclude that we may not judicially correct the **Investigating Grand Jury** Act (although, as we discuss next, we may insure an infirm process does not result in unconstitutional harm). Accordingly, for all of these reasons, we must reject Petitioners' proffered remedy.

[7] [8] Consequently, given that we are compelled to reject the remedies proffered by the parties,¹⁵ we consider the only remaining option available to us to be the one which we utilized during the pendency of this appeal: **redaction**. As we recognized *724 in our prior opinion in this matter, the supervising judge's limited review and approval of a

grand jury report for public release gives it an *imprimatur* of official government sanction which carries great weight in the eyes of the public, and, thus, may compound the harm to a person's reputation who is wrongly **named** therein. As such, we ordered the temporary **redaction** of Report I while we addressed the challenges to it. In the absence of any other viable remedy, we are compelled to find that these **redactions**, with respect to Petitioners, must be made permanent.

We acknowledge that this outcome may be unsatisfying to the public and to the victims of the abuse detailed in the report. While we understand and empathize with these perspectives, **constitutional** rights are of the highest order, and even alleged sexual abusers, or those abetting them, are guaranteed by our Commonwealth's **Constitution** the right of due process. It is the unfortunate reality that the **Investigating Grand Jury** Act fails to secure this right, creating a substantial risk that Petitioners' reputations will be irreparably and illegitimately impugned. This prospect we may not ignore. Therefore, as no other remedy is presently available, we order that the temporary **redaction** of Petitioners' **names** and other identifying information from Report I be made permanent.¹⁶

We emphasize, however, that our adoption of this remedy is not to be construed as demeaning the service of the **grand jury** in this matter. As the Chief Justice wrote in our earlier opinion, the **grand jury** “undertook the salutary task of exposing alleged child sexual abuse and concealment of such abuse, on an extraordinarily large scale.” *Grand Jury I*, 190 A.3d at 578. We recognize and appreciate the importance of the **grand jury's** efforts. Nevertheless, as the highest Court in this Commonwealth, it is our obligation to guard against **constitutional** infringements. Because Petitioners' most fundamental individual **constitutional** rights have been imperiled, we are compelled to take these curative measures in order to fulfill our Court's duty to protect those rights.

Justices Baer, Donohue, Dougherty, Wecht and Mundy join the opinion.

Justice Baer files a concurring opinion.

Justice Dougherty files a concurring opinion.

Chief Justice Saylor files a dissenting opinion.

JUSTICE BAER, Concurring

I join the Majority Opinion in full in concluding, reluctantly, that the parties failed to present any currently available

remedy to cure the due process violations identified in this Court's decision of July 27, 2018, other than the previously ordered **redaction** of the **grand jury** report. *In re Fortieth Statewide Investigating Grand Jury*, — Pa. —, 190 A.3d 560 (2018). Additionally, I concur in principle with many of the sentiments expressed by Justice Dougherty in his responsive opinion. I write separately to address two points.

First, like my colleague in concurrence, I agree that this Court should provide guidance to the Commonwealth regarding how it may comport with due process in conducting future **investigating grand juries** where an individual's right to reputation is implicated, pending any legislative action to address the **constitutional** deficiencies in the **Investigating Grand Jury** *725 Act, 42 Pa.C.S.

§§ 4541- 4553, highlighted by this Court's July 27th decision. *Id.* Moreover, while I understand the benefits of presenting a potential framework for how due process may be effectuated, I emphasize the concurrence's observation that the recommendations “are not etched in stone” and “should not be interpreted as the only method of affording the necessary protections.” Concurring Op. at 726 (Dougherty, J.). My fear is that any rigid framework could be manipulated to delay the publication of **grand jury** reports until the passage of the statutory maximum term of a **grand jury**, concluding in the unsatisfactory result seen in the instant case.

While I do not endorse specific procedures, I generally caution the Commonwealth that, if it intends to criticize but not indict an individual in a **grand jury** report to an extent that threatens the individual's right to reputation, it should provide reasonable notice of any potential accusations and a meaningful opportunity to respond thereto. In my view, detailed procedural requirements are better left to the legislative branch or addressed by a supervising judge on a case-by-case basis.

Second, I acknowledge the Majority's observation that the question of any future **grand jury investigation** of these Petitioners is outside the scope of the current case. Majority Op. at 724, n.16. Nevertheless, based on my current understanding of the various **constitutional** rights at issue and estoppel doctrines generally, I see no impediment to a new **investigation** of these Petitioners, or potentially other individuals, by a future **grand jury**, so long as the necessary due process is provided by the Commonwealth. I acknowledge, of course, that future advocacy to the contrary may alter my position.

JUSTICE DOUGHERTY, Concurring

The majority's conclusion there is no due process remedy presently available to secure petitioners' **constitutional** rights to reputation is compelling and unavoidable. As the majority points out, neither party has directed us to any authority that would permit the Court to fashion any of the suggested judicial remedies, each of which would require "wholly recraft[ing] a purely statutory process and compel[ling] the parties to reopen and participate anew in an extra-statutory proceeding." Majority Opinion, at 723. Unfortunately, the parties' exhaustive search for a legally supportable remedy capable of protecting petitioners' due process rights at this late stage has been fruitless. Therefore, I am constrained to join the majority's opinion adopting as permanent the temporary **redactions** of petitioners' **names** and other identifying information.

However, while the majority's well-reasoned opinion reaches the correct result in this particular case, it does little to illuminate a path forward. The majority recognizes the remedies suggested by the parties, as well as the procedures authorized by statute in certain other states, are not without merit. *Id.* at 723, n.15. Nevertheless, it concludes that "making such procedures a part of the **grand jury** process is a task committed to the sound discretion of the legislature, which is in the best position to evaluate them and determine if, as a matter of policy, any of these procedures should be adopted and utilized in future **grand jury** proceedings." *Id.* I take no issue with this conclusion. In my respectful view, however, the issue that brought the parties here is of **constitutional** dimension, and I believe this Court's further guidance on that legal question would be beneficial to the legislature, should it ultimately endeavor to revisit the procedures set forth in the **Investigating Grand Jury Act** *726 ("Act"), 42 Pa.C.S. §§ 4541-4553. Moreover, **investigating grand juries** will surely persist even after today's decision, and, presumably, even in the absence of legislative correction. Indeed, as we previously recognized, nothing in the Act precludes the Commonwealth from continuing this practice, so long as it can satisfy the **constitutional** standard on its own initiative. See *In re Fortieth Statewide Investigating Grand Jury*, — Pa. —, 190 A.3d 560, 574 (2018) (*Grand Jury I*) ("[T]he **Investigating Grand Jury** Act does not restrain the attorney for the Commonwealth from implementing additional procedural protections[.]"). Thus, while I fully agree with the majority that it is beyond our

authority to recraft the Act by judicial fiat, I write separately to elucidate how, in my view, the dissatisfying result of this case can and should be avoided in the future.

Initially, I recognize that, because due process is an "elusive concept" with "exact boundaries [that] are undefinable,"

Hannah v. Larche, 363 U.S. 420, 442, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960), the procedures I recommend below are not etched in stone. For that reason, my proposed formulation should not be interpreted as the only method of affording the necessary protections, nor as foreclosing the imposition of additional statutory safeguards, as some other states have deemed appropriate. See, e.g., N.Y. CRIM. PROC. LAW § 190.85. The proposals below are, quite simply, the minimum procedures I believe are required to assure due process to nonindicted individuals criticized in an **investigating grand jury** report. See *In re Grand Jury of Hennepin Cty. Impaneled on Nov. 24, 1975*, 271 N.W.2d 817, 820-21 (Minn. 1978) ("A procedure may be devised which allows the release of the much needed information contained in **grand jury** reports and at the same time protects the individuals involved from unjust accusation."). With that understanding, my proposed procedures, which I believe are supported by the Act's current statutory scheme, follow.

First, in line with the Court's prior pronouncement that it would be "ideal" for **named** individuals to be afforded the opportunity to appear before the **grand jury**, see *Grand Jury I*, 190 A.3d at 578, I would hold this requirement essential to due process. See SARA SUN BEALE & WILLIAM C. BRYSON, **GRAND JURY LAW & PRACTICE** § 2.4 ("At a minimum, due process is likely to require that the individual have an opportunity to refute the charges against him in an appearance before the **grand jury**[.]"). As we previously noted, and as the Commonwealth now seems to agree, see Commonwealth's Supplemental Brief at 9, the government should wish to present such testimony "for the benefit of lay **grand jurors** who have plainly set out to find the truth and reveal it to the public." *Grand Jury I*, 190 A.3d at 574. See also BEALE, *ET AL.*, **GRAND JURY L. & PRAC.** § 2.4 ("[A]llowing the subject of the **investigation** to appear and testify before the report is filed would not seriously disrupt the **grand jury's investigation**, and it would greatly enhance the fairness of the proceedings (and perhaps their accuracy as well)."). Moreover, a "meaningful" opportunity to be heard demands more than the bare occasion to testify before the **grand jury**. For the **named** individual's testimony to be meaningful, it must be made with full knowledge of the allegations against him, which, in some cases, might require

the disclosure of certain underlying evidence supporting those allegations. See generally *In re Second Report of Nov. 1968 Grand Jury of Erie Cty.*, 26 N.Y.2d 200, 309 N.Y.S.2d 297, 257 N.E.2d 859, 861 (1970) (Fuld, C.J.) (“To limit the accused official or employee to a bare unsupported and unsubstantiated list of charges and allegations against him would serve to deprive *727 him of that opportunity to be heard[.]”). After hearing the individual's testimony, if any, the **grand jury** will be better suited to decide whether it needs to consider additional evidence, or whether it is prepared to finalize its report and submit it to the supervising judge.¹

Second, after the **named** individual has been afforded a meaningful opportunity to testify, the **grand jury**, by an affirmative majority vote, may submit its report to the supervising judge. See 42 Pa.C.S. § 4552(a). If the submitted report still includes references critical of a **named** but nonindicted individual, it should be supported by citation to all specific exhibits or transcript pages pertinent to that individual. As discussed below, this process will facilitate the discrete review in which the supervising judge must subsequently engage.

Third, if the supervising judge concludes there are critical references in the report, such that it would implicate the right to reputation, he should provide the appropriate sections to the criticized individuals. See 42 Pa.C.S. § 4552(e). This will put those **named** individuals on notice of the proposed criticisms, and allow them an opportunity to file any written objections and appear before the supervising judge to argue against their inclusion in the report.

Fourth, pursuant to 42 Pa.C.S. § 4552(b), the supervising judge “to whom such report is submitted shall examine it and the record of the **investigating grand jury**” to determine whether the report — including each individual criticism contained therein — is “based upon facts received in the course of an **investigation** authorized by [the Act] and is supported by the preponderance of the evidence.” *Id.* In other words, the judge must review criticism of any individual on its own merit. See *Grand Jury I*, 190 A.3d at 575 (preponderance-of-the-evidence review pursuant to Section 4552(b) requires discrete determination of whether each specific criticism is supported by a preponderance of the evidence, rather than on a “report-wide basis”). This review should be limited to the existing record; and the inquiry would merely be whether the record

provides a basis for the **grand jury's** conclusion, akin to a sufficiency analysis, whether or not the reviewing judge would have reached the same conclusion himself. See generally *In re Vencil*, 638 Pa. 1, 152 A.3d 235, 237, 242-43 (2017), *cert. denied*, — U.S. —, 137 S.Ct. 2298, 198 L.Ed.2d 751 (2017) (equating “sufficiency” with “supported by” and holding, in the context of judicial review of an involuntary civil commitment under the Uniform Firearms Act, that a reviewing judge's task is not to conduct a *de novo* review but to “determine *728 whether [the] findings are supported by a preponderance of the evidence,” “limited to the information available to the [decision-maker] at the time”). In this respect, I emphasize the majority's conclusion that the judge's role under this statutory provision is “strictly circumscribed to conducting a judicial review of the report and the record as developed before the **grand jury** ... [and] plainly does not authorize a supervising judge to conduct his own *de novo* review, let alone receive additional evidence.” Majority Opinion, at 722.²

Fifth, if the supervising judge concludes the record supports the criticism of each and every identified individual, the report should be approved. See 42 Pa.C.S. § 4552(b). If there is any individual for whom criticism is not supported by a preponderance of the evidence, the report should be sent back to the **grand jury**, if it is still in session, along with the bases for the supervising judge's remand. The **grand jury** may then decide whether the deficiencies can be remedied, whether the relevant criticisms should be deleted, or whether the report as a whole should be withdrawn. See *Grand Jury I*, 190 A.3d at 576 (“it would be preferable for [a] **grand jury** to have an opportunity to correct mistakes that it may have made”). If, on the other hand, the **grand jury's** term has expired, any unsupported criticism must be excised by the supervising judge. See *id.* (“[T]his Court has determined that the remedy of excision is available with respect to a **grand jury** report that offends due process, or otherwise unconstitutionally impairs reputational rights, relative to a particular individual or individuals.”).

Sixth, once the court approves publication of the report, any criticized individuals should be given the opportunity to file a public response. See 42 Pa.C.S. § 4552(e). While I acknowledge this Court's concern that Section 4552(e) calls upon the supervising judge to exercise “discretion” in applying this provision, see *Grand Jury I*, 190 A.3d at 566 n.4, I would simply conclude that a judge's refusal to publish relevant, appropriate material — by which I mean material

that is not obviously prohibited, privileged, or protected (such as **names** and addresses of **grand jurors**) — would constitute an abuse of discretion. Hence, in all but the rarest of cases, the judge must permit the criticized individual to publish a response to the **grand jury** report.

In my view, application in future cases of the procedures outlined above would be sufficient to remedy the problems that now preclude the full release of the report in this case. Moreover, these proposals are entirely consistent with the Act as currently written and require no judicial rewriting, which I agree with the majority would be improper. In the event the legislature may choose to revisit the Act, I stress again that these suggested procedures are *729 not the only means of protecting reputational interests while also preserving the historic watchdog function of the citizen **grand jury**; rather, these procedures, taken together, merely establish a **constitutional** floor that I believe would satisfy due process. In a similar vein, should the legislature choose not to act, I see no impediment to the Commonwealth unilaterally employing these or more extensive due process procedures to safeguard the reputational rights of **named** but nonindicted individuals, which in turn will ensure the integrity of future **investigating grand jury** reports and allow for their full release.

CHIEF JUSTICE SAYLOR, Dissenting

As the majority relates, the remedy initially requested by Petitioners was a remand for a *de novo* evidentiary hearing before a supervising judge to determine whether Report 1 of the 40th Statewide **Investigating Grand Jury** was supported by a preponderance of the evidence relative to each of the petitioners. In this regard, Petitioners made what was perhaps a strategic decision not to lodge a facial challenge to the **constitutionality** of the **Investigating Grand Jury** Act or to oppose the release of the bulk of the **grand jury's** report.¹ For my part, I have favored -- and I continue to favor -- the affordance of the comparatively modest relief that had been requested at the outset.

I respectfully differ with any suggestion that such relief would constitute a rewriting of the **Investigating Grand Jury** Act. Rather, I believe that a hearing before a judicial officer serves as a conventional pre-deprivation remedy. Moreover, this Court has often portrayed its authority to regulate procedures in the judiciary as being exclusive, *see, e.g., Commonwealth v. McMullen*, 599 Pa. 435, 444, 961 A.2d 842, 847 (2008), and accordingly, it seems to me to be unsurprising that the General Assembly would

refrain from attempting to engraft a detailed procedural code upon an **investigating grand jury** scheme encompassing supervision by a member of the judiciary. Furthermore, the enactment is subordinate to the **Constitution**, *see, e.g., In re Subpoena on Judicial Inquiry and Review Bd.* 512 Pa. 496, 507, 517 A.2d 949, 955 (1986), and its provisions can and should be interpreted to allow for the conferral of supplemental procedures and protections when necessary, under the **Constitution**, to vindicate individual rights. *See* 1 Pa.C.S. § 1922(3) (embodying the presumption “[t]hat the General Assembly does not intend to violate the **Constitution** of the United States or of this Commonwealth”).

Although I would grant the *de novo* hearings that Petitioners had requested, I would not require discovery on the scale that they envision or the cross-examination of witnesses that testified before the **grand jury**. Rather, since due process is a flexible concept to be assessed against the particular circumstances, I would authorize the supervising judge to make reasonable judgments concerning whether, and to what extent, Petitioners would be permitted to review and test the evidence upon which the **grand jurors** relied. The judicial officer's assessment might be informed by (among other considerations) residual secrecy concerns, to the extent that they still pertain, as well as the burden upon victim-witnesses, should their own interests be at stake.²

*730 At a minimum, however, it is my position that Petitioners should be provided the opportunity to advocate that the **grand jury's** particularized findings of criminal and/or morally reprehensible conduct are not supported by a preponderance of the evidence. In addition, for those of the petitioners who were never afforded the opportunity to testify before the **grand jury's** term expired, I conclude that due process requires that they be permitted to do so before a supervising judge. I would also direct that, after the judge entertains the testimony and arguments, he should make a determination whether the **grand jury's** challenged criticisms of each individual petitioner are supported by a preponderance of the evidence and prepare an opinion explaining why this is or is not so. Finally, I would require these opinions to be filed under seal, at least until the claims involving Petitioners' reputational rights are finally resolved.

I recognize that it would be “far more difficult to incorporate other procedural safeguards, such as [a mandated] opportunity to confront and cross-examine adverse witnesses, without fundamentally altering the **grand jury's** traditional inquisitorial role.”¹ SARA SUN BEALE & WILLIAM

C. BRYSON, **GRAND JURY LAW AND PRACTICE** § 2.4 (1986). This is why I would leave these matters to the discerning judgment of a supervising judge, in the first instance, for circumstance-dependent consideration according to the governing litmus of fundamental fairness

and with due consideration of the historical and institutional grounding of the **grand jury**.

All Citations

197 A.3d 712

Footnotes

- 1 Petitioners are 11 of the more than 300 **priests named** in Report 1.
- 2 A more complete factual and procedural history of the proceedings which transpired in this matter may be found in that opinion.
- 3 ¹ 42 Pa.C.S. § 4541 *et seq.*
- 4 This subsection provides:
(e) Authorization of response by nonindicted subject.--If the supervising judge finds that the report is critical of an individual not indicted for a criminal offense the supervising judge may in his sole discretion allow the **named** individual to submit a response to the allegations contained in the report. The supervising judge may then in his discretion allow the response to be attached to the report as part of the report before the report is made part of the public record pursuant to subsection (b).
² 42 Pa.C.S. § 4552(e).
- 5 This subsection provides:
(b) Examination by court.--The judge to whom such report is submitted shall examine it and the record of the **investigating grand jury** and, except as otherwise provided in this section, shall issue an order accepting and filing such report as a public record with the court of common pleas established for or embracing the county or counties which are the subject of such report only if the report is based upon facts received in the course of an **investigation** authorized by this subchapter and is supported by the preponderance of the evidence.
Id. § 4552(b).
- 6 As discussed in **Grand Jury I**, Petitioners are part of a larger group of "[d]ozens of individuals (primarily members of the clergy)" who challenged Report 1, generally asserting a denial of **constitutional** rights. **Grand Jury I**, 190 A.3d at 565; *see id.* at 565-68. We ordered the **redaction** from Report 1 of identifying information for Petitioners as well as any individuals with an appellate challenge pending before the Court. *See id.* at 578.
- 7 In ³ *Carlacci*, which we discuss at greater length *infra*, our Court held that the **naming** of the respondent in a temporary Protection From Abuse ("PFA") order entered *ex parte* by a judge, without the respondent having a chance to defend against the allegations that furnished the basis of the order, impaired his **constitutional** right to reputation. Thus, even though the PFA statute provided no formal mechanism for expungement of that order, our Court deemed respondent's right to reputation to be of such significance that, pursuant to our inherent authority to avoid violations of **constitutional** rights posed by the outcome of statutorily directed court proceedings involving the judiciary, we ordered expungement of the PFA order to ameliorate any potential harm to respondent's reputation.
- 8 Subsequent to oral argument, Petitioners and the Commonwealth filed a Joint Motion to Supplement Record, and the Commonwealth filed a separate Motion to Supplement Record with our Court. We grant both motions.
- 9 The Commonwealth disputes Petitioners' characterization of this jurisprudence. *See* Commonwealth Supplemental Brief at 23-24. Because we decide this case solely under Pennsylvania law, we need not resolve these conflicting arguments.
- 10 This second assertion represents an expansion of Petitioners' original suggested remedy, which consisted solely of a hearing before the supervising judge.
- 11 Petitioners additionally allege that the Attorney General leaked **grand jury** information on two separate occasions, even though such information was protected from disclosure by this Court's **redaction** order. The Attorney General denies this allegation. Petitioners conveyed these allegations in writing to the special master appointed by our Court to oversee the **redaction** process, the Honorable John M. Cleland. We note that, in any event, Petitioners seek no additional relief for this purported violation than the due process remedies they have proposed in their brief.

- 12 In this regard, the Commonwealth disputes the factual assertions of inaccuracies in Interim Report 1 enumerated by
 13 Petitioners, contending, for example, that the date discrepancies were the result of typographical errors regarding
 birthdates and ages of the individuals referenced.
- 13 Our Court granted leave for the Catholic League for Individual and Civil Rights to file an *amicus* brief in this matter, and for
 the Attorney General to file a responsive brief. In its *amicus* brief, the Catholic League substantially aligns with Petitioners'
 arguments, and the Attorney General's responsive brief largely reiterates the arguments it has made in its principal brief.
- 14 The Commonwealth's suggestion that a new **grand jury** could be empaneled to hear these disputed matters does not
 resolve the question before us: whether the **grand jury's** findings regarding Petitioners and its condemnation of them
 may be released as part of *this grand jury* report, Report 1.
- 15 This is not to suggest that we find the remedies suggested by the parties or the procedures utilized by other states to
 be without merit. However, making such procedures a part of the **grand jury** process is a task committed to the sound
 discretion of the legislature, which is in the best position to evaluate them and determine if, as a matter of policy, any of
 these procedures should be adopted and utilized in future **grand jury** proceedings.
- 16 It is outside the scope of this opinion to address the question of whether a future **investigating grand jury**, utilizing a
constitutionally permissible process, may now **investigate** the allegations against these Petitioners.
- 1 There are several facets to this particular procedure on which I take no position at this time. For example, although the
 Commonwealth now agrees individuals criticized in a report should be given an opportunity to testify before the **grand
 jury**, it argues they "would have the same rights as other witnesses under the Act." Commonwealth's Supplemental Brief
 at 9, *citing* 42 Pa.C.S. § 4549(c). Whether Section 4549(c) should apply with full force to individuals who choose to
 invoke their due process right to be heard by the **grand jury** is questionable; indeed, a blanket application of Section
 4549(c) to these "witnesses" would raise serious questions about their counsel's role in the proceeding — not to mention
 the Commonwealth's attorney's role. Similarly, I take no position on petitioners' observation that some jurisdictions also
 afford an individual **named** in a **grand jury** report the opportunity to present witnesses on his behalf. See Petitioners'
 Supplemental Brief at 26, *citing* Utah Code Ann. § 77-10a-17(1), (2)(b) (affording any person **named** in a report
 "and any reasonable number of witnesses on his behalf" an opportunity to testify before the **grand jury**). For now, I simply
 reiterate that what is at issue is the **named individual's** right to be heard.
- 2 Beyond agreeing with the majority as to what the plain language of Section 4552(b) does and does not allow of
 a supervising judge, I reject outright petitioners' wide-sweeping claim that due process demands the opportunity to
 participate in a *de novo* evidentiary hearing, let alone that such hearing must require, *inter alia*, "an opportunity to cross-
 examine witnesses[.]" Petitioners' Supplemental Brief at 38. Neither law nor reason supports this assertion. See, e.g.,
Hannah, 363 U.S. at 449, 80 S.Ct. 1502 (rights of appraisal, confrontation, and cross-examination "have not been
 extended to **grand jury** hearings because of the disruptive influence their injection would have on the proceedings");
 BEALE, ET AL., **GRAND JURY** L. & PRAC. § 2.4 ("It would, however, be far more difficult to incorporate other procedural
 safeguards, such as the opportunity to confront and cross-examine adverse witnesses, without fundamentally altering
 the **grand jury's** traditional inquisitorial structure.").
- 1 To the degree this was a strategic choice, it seems to me to have been a reasonable one in the context of the subject
 matter and scale of the report in issue.
- 2 In our July 27th opinion, we explained that "the historical acceptance of the institution of the **grand jury** can go only so
 far in justifying the relaxation of procedural requirements for the protection of [fundamental] rights." *In re 40th Statewide
 Investigating Grand Jury*, — Pa. —, —, 190 A.3d 560, 573 (2018). Accordingly, we rejected the proposition that
 a person criticized in a **grand jury** report -- at least where the criticisms are of the nature and scale of Report 1 -- has
 no right to any pre-deprivation process beyond the submission of a written response. See *id.* at 575. Nevertheless, I find
 that the institutional grounding of the **grand jury** regime should serve a significant role in assessing the nature of the
 process that is due to Petitioners at the present stage.
- Along these lines, the investment of discretion in a supervising judge to shape the proceedings would ameliorate, to a
 degree, the concerns expressed by Judge Krumenacker about burdening **investigating grand jury** proceedings with
 trial-like requirements and otherwise fundamentally altering **grand jury** review. See *id.* at 567 (citing *In re 40th Statewide
 Investigating Grand Jury*, No. 571 M.D. 2016, *slip op.* at 7-8 (C.P. Allegheny June 5, 2018)). But, again, the Court has
 ruled that the critical character of the **grand jury** report in issue calls for *some* additional process. *Accord id.* at 575.

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Church Documents

**Archdiocese of St. Louis
Diocese of Kansas City-St. Joseph
The Diocese of Jefferson City
The Roman Catholic Diocese of Springfield-Cape Girardeau**

To the People of Missouri:

Last fall, each Bishop of Missouri invited the Missouri Attorney General's Office to our respective (arch)dioceses to conduct a thorough and transparent investigation relating to allegations of the sexual abuse of minors by clergy.

As bishops and spiritual leaders, we are committed to the protection of all persons, particularly children and youth, and we welcomed this investigation for a couple of key reasons: First, we wanted to understand if there were any cases of abuse of which we were unaware and/or that when warranted, had not been reported to law enforcement. Second, we wanted this investigation to help to restore trust in our (arch)dioceses and in their child and youth protection policies which are consistent with the national US Bishops' Charter for the Protection of Children and Young People and Essential Norms that we have mandated for more than 17 years.

The Charter, which is updated regularly, spells out strict procedures for removing from ministry those credibly accused of abusing minors. It also calls for training children and all adults who work with them in church and school settings to recognize and appropriately handle possible sexual abuse, and created diocesan and national mechanisms for monitoring compliance.

The charter directs action in:

- Creating a safe environment for children and young people.
- Healing and reconciliation of victims and survivors.
- Making prompt and effective response to allegations.
- Cooperating with civil authorities.
- Disciplining offenders.

Each of our (arch)dioceses has worked collaboratively with the Missouri Attorney General's Office to ensure that the Attorney General had unfettered access to all information it requested, in keeping with applicable law. We have made available to the Attorney General's Office all documents which they have requested.

We await the Attorney General's report and will read it through the lens of our current understanding of the scope and context of abuse. We acknowledge the harmful effects of abuse on victim survivors.

We believe that our Church has implemented important measures to help ensure that our children and youth grow, develop and flourish in a safe environment and a societal culture that protects all persons, but especially children and young people, and vulnerable adults.

Each (arch)diocese has implemented policies and procedures to carry out this important responsibility, which can be found on our respective (arch)diocesan websites.

Yours in Christ,

Archdiocese of St. Louis

By: + Robert J. Carlson
Archbishop Robert J. Carlson

Diocese of Kansas City-St. Joseph

By: + James V. Johnston, Jr.
Bishop James V. Johnston, Jr.,

Catholic Diocese of Jefferson City

By: + Shawn W. McKnight
Bishop W. Shawn McKnight

The Roman Catholic Diocese of Springfield-Cape Girardeau

By: + Edward M. Rice
Bishop Edward M. Rice

STATEMENTS REGARDING CREDIBLY
ACCUSED PRIESTS
MISSOURI DIOCESES

Jefferson City



Statement on updated list of credibly accused or removed from ministry in the Diocese of Jefferson City

Bishop W. Shawn McKnight

Dec. 16, 2018

On November 8 I provided to the people of our Diocese and the public a list of 33 priests and religious brothers who have either been credibly accused or removed from ministry in the Diocese of Jefferson City out of concern for the safety of our youth. Today, I am providing an updated list. With this update, two names are added to those who have been credibly accused of abuse and one name, which is of a priest who was removed from ministry out of safety concerns, has now been determined to be credibly accused of abuse. This update is the result of information we received after our November 8 release and recent action by the Diocesan Review Board.

The three priests are: Don Greene, deceased; Mel Lahr, removed from ministry because of a credible allegation of violation of the Charter for the Protection of Children and Young People; and Robert Duesdieker, whose removal from ministry now results from a credible allegation of violation of the Charter.

These men have been added to the list after our Diocesan Review Board on Dec. 5 made a recommendation that the allegations against them be deemed credible. After considering all the testimony, I accept the Review Board's recommendation and deem these allegations credible. I am grateful to the members of the Review Board for their expertise and commitment to our Diocese's efforts to provide safe, holy and healthy environments for our children, young people and vulnerable adults.

It is important to remember that, while only one on the list has been criminally convicted, the Church holds a much higher standard for those who serve its people holding a sacred trust. The solemn vows we take when we are ordained or enter religious life call us to higher standards of conduct. As of today, there has not ever been a credible accusation of sexual abuse of a minor against any clergy or religious now serving in the Diocese of Jefferson City.

It is with great sorrow that I publish this list. I humbly and sincerely offer my deepest apologies to those who have been abused by clergy and religious. I also offer my condolences to them, their families, friends, and communities.

We want to provide care for those who have been harmed. Today we are publishing what we know. If you have further information about any priest, deacon or religious brother or sister, please contact the appropriate civil authorities. You may also contact our Victims Assistance Coordinator, Nancy Hoey. Her contact information is available on our website, and in this handout.

Even with these new credibly accused, the most recent case in our Diocese of physical sexual abuse of a minor occurred in 1997. Since then, we have had two credible allegations of violations of the U.S. Bishops' *Charter for the Protection of Children and Young People*: one being the inappropriate use of social media; and the other, Internet pornography depicting minors. Although the incidents are in the past, the pain caused is still a present reality for the survivors of abuse and their loved ones. I pray this effort on our part provides some small measure of hope and opens an opportunity for healing to those immediately harmed by sexual abuse.



Priests and religious brothers credibly accused and/or removed from ministry in the Diocese of Jefferson City

Dec. 16, 2018: changes underlined

Clergy and religious brothers who have served in the Diocese of Jefferson City who have been credibly accused of actions which were in violation of the Charter for The Protection of Children and Young People ("Charter") or which would have constituted a violation of the Charter if the Charter had been in effect:

Name of Cleric	Diocese/Religious Order	Status
Behan, Hugh	Diocese of Jefferson City	removed from ministry
Clohessy, Kevin	Diocese of Jefferson City	removed from ministry
Daly, Manus	Diocese of Jefferson City	removed from ministry
DeAngelis, John B.	Diocese of Jefferson City	deceased (1989)
Degnan, John	Diocese of Jefferson City	deceased (2010)
Doyle, Brendan	Diocese of Jefferson City	removed from ministry
Duesdieker, Robert	Diocese of Jefferson City	removed from ministry
Duggan, Thomas	Diocese of Jefferson City	deceased (2009)
Faletti, Stephen	Diocese of Jefferson City	deceased (2017)
Fischer, John	Diocese of Jefferson City	removed from ministry
Greene, Don	Diocese of Jefferson City	deceased (1985)
Howard, Gerald/Carmen Sita	Archdiocese of Newark, NJ	imprisoned
Lahr, Mel	Diocese of Jefferson City	removed from ministry
Long, John	Diocese of Jefferson City	removed from ministry
McMyler, Patrick	Diocese of Jefferson City	deceased (1985)
McNally, James	Diocese of Jefferson City	laicized
Mohan, James	Diocese of Jefferson City	deceased (1990)
Musholt, Silas	Franciscan Friars	deceased (1999)
O'Connell, Anthony	Diocese of Jefferson City	deceased (2012)
Pender, John	Diocese of Scranton PA	deceased (2009)
Pool, Gary	Diocese of Jefferson City	laicized
Schutty, John	Diocese of Jefferson City	removed from ministry
Scobee, Robert	Diocese of Jefferson City	deceased (1979)
Seifner, Thomas	Diocese of Jefferson City	removed from ministry
Smyth, Sean	Diocese of Jefferson City	deceased (1990)
Tatro, Timothy	Diocese of Jefferson City	removed from ministry
Wallace, Donald	Diocese of Jefferson City	removed from ministry
Westhoff, Frank	Diocese of Springfield, IL	deceased (2006)
Whiteley, John	Diocese of Jefferson City	removed from ministry

Name of Religious	Diocese/Religious Order	Status
Bro. Dominic Nixon	Presentation Brothers	removed from ministry in the diocese
Bro. Eric Lucas	Presentation Brothers	removed from ministry in the diocese
Bro. Jude Collins	Presentation Brothers	deceased (2000)

Clergy who have served in the Diocese of Jefferson City found by the diocesan bishop to be unsuitable for ministry out of concern for the safety of our youth:

Name of Cleric	Diocese/Religious Order	Status
Buescher, David	Diocese of Jefferson City	deceased (2013)
Mulokozi, Deusdedit	Society of the Precious Blood	expelled from the diocese
Schlachter, Eric	Diocese of Jefferson City	removed from ministry



Priests and Religious Brothers **Credibly Accused and/or Removed From Ministry** **Diocese of Jefferson City**

Clergy who have served in the Diocese of Jefferson City who have been credibly accused of actions which were in violation of the Charter for The Protection of Children and Young People ("Charter") or which would have constituted a violation of the Charter if the Charter had been in effect:

29

Clergy who have served in the Diocese of Jefferson City found by the diocesan bishop to be unsuitable for ministry out of concern for the safety of our youth:

3

Religious brothers who have served in the Diocese of Jefferson City who have been credibly accused of actions which were in violation of the Charter or which would have constituted a violation of the Charter if the Charter had been in effect:

3

Median year of birth:

1938

Median year of ordination:

1964

**Averages from the PA attorney
 general report: year of birth 1933,
 year of ordination 1961**

Member of a religious order
 (priest or brother):

5

From another diocese:

3

Diocese of Jefferson City:

27

Deceased:

15

Laicized:

2

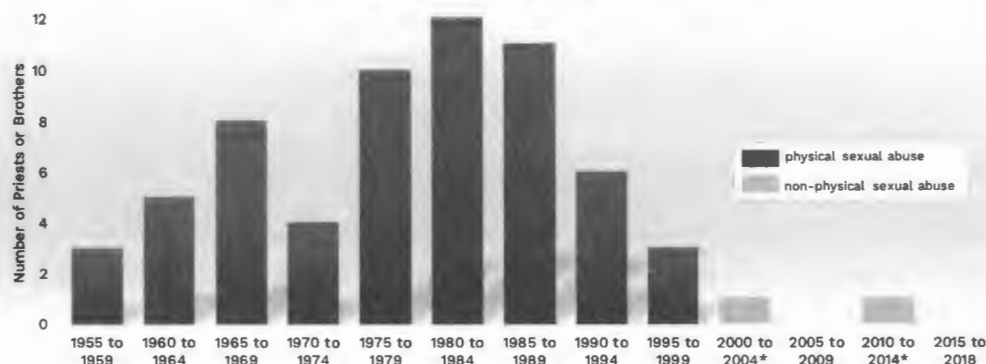
Living priests of the Diocese
 of Jefferson City permanently
 removed from ministry:

14

Living priests or brothers from
 outside of the diocese:

4

**Priests or Brothers With Alleged Offenses Reported
 Occurring or Beginning During Each Five-Year Period
 in the Diocese of Jefferson City**



*Note: All incidents after 1997 involve non-physical sexual abuse.



Four Ways the Diocese of Jefferson City is Preventing Sexual Abuse



Creating safe environments

Every person who works or volunteers for the Church in a setting with children must undergo a background check and receive training on safe environment. This means nearly 18,000 people in our Diocese know the warning signs of predatory behavior, know the Diocese's code of conduct and know how to report suspicious activity of anyone who might want to harm children. The most recent incident of physical sexual abuse of a minor in our Diocese occurred in 1997.



Reporting abuse

If you or someone you know has been abused or victimized by someone representing the Catholic Church, believe in the possibility for hope, help and healing. Please contact our Victim Assistance Coordinator, Nancy Hoey, at 573-694-3199 or reportabuse@diojeffcity.org. Also contact the Missouri Child Abuse & Neglect Hotline at 1-800-392-3738 or the Missouri Adult Abuse & Neglect Hotline at 1-800-392-0210.



Thoroughly investigating

Every allegation of abuse by someone representing the Catholic Church, whether it concerns a minor or an adult, is reviewed by an independent group of professionals. The bishop has used a confidential consultative body since 1991. Today, the Diocesan Review Board is comprised of 24 individuals. Their professional and personal expertise includes attorney-at-law, counseling, criminal justice, education (including a Catholic school principal), human resources, law enforcement, pastoral ministry (including a pastor), pediatrics, psychiatry, and social services. The bishop relies on their recommendations to determine how to respond to allegations of sexual misconduct or abuse.



Improving standards for clergy

Every candidate for the priesthood and diaconate undergoes a thorough investigation and formation. Seminarians and diaconal candidates for the Diocese of Jefferson City are required to undergo psychological screening, receive safe environment training and criminal record checks, and receive formation in psychosexual development.

Kansas City – St. Joseph



DIOCESE OF KANSAS CITY-ST. JOSEPH

One Family: RESTORED IN CHRIST - EQUIPPED FOR MISSION

www.kcsjatholic.org



List of diocesan clergy with substantiated abuse of minors allegations

KCSJ	Last Name	First Name	Year of Birth	Year of Ordination	Year of Death	More Than 1 Allegation	Status
1	Ahern	James	1902	1930	1970	No	deceased
2	Brewer	Michael	1959	1986		Yes	permanently removed from ministry
3	Cameron	Robert	1929	1959	2015	No	deceased
4	Deming	Robert	1932	1958	2019	No	deceased
5	Ford	James	1947	1973	1992	Yes	deceased
6	Giacopelli	John	1928	1959	2018	No	deceased
7	Hoppe	Sylvester	1911	1946	2002	Yes	deceased
8	Jakubowski	Joseph	1912	1940	2005	Yes	deceased
9	McGlynn	Francis	1927	1954	2012	Yes	deceased
10	Monahan	Hugh	1941	1968		Yes	laicized
11	O'Brien	Thomas	1926	1950	2013	Yes	deceased
12	Ratigan	Shawn	1965	2004		Yes	in federal prison; laicized
13	Reardon	Thomas	1941	1967		Yes	laicized
14	Tierney	Michael	1944	1969		Yes	permanently removed from ministry
15	Tulipana	John	1946	1972	2012	Yes	deceased
16	Ward	Thomas	1932	1962	2012	Yes	deceased
17	Waterman	Thomas	1930	1956	1998	No	deceased
18	Wegenek	Jerry	1937	1964	2011	Yes	deceased
19	Wise	Stephen	1951	1979		Yes	laicized

List of clergy with substantiated abuse of minors allegations during time within the territory of Kansas City – St. Joseph but incardinated elsewhere and on a published list of that diocese

Diocese	Last Name	First Name	Year of Birth	Year of Ordination	Year of Death	More Than 1 Allegation	Status
Cheyenne	Hart	Bishop Joseph	1931	1956		Yes	Vatican trial publicized
Scranton	Honhart	Mark	1946	1980		Yes	permanently removed from ministry
Baton Rouge	Sullivan	Bishop Joseph V.	1919	1946	1982	Yes	deceased

List of religious clergy with substantiated abuse of minors allegations while working within the territory of Kansas City – St. Joseph and assessed by diocesan Independent Review Board

Religious Community	<u>Last Name</u>	<u>First Name</u>	Year of Birth	Year of Ordination	Year of Death	More Than 1 Allegation	<u>Status</u>
C.M./ Vincentian	Coury	Philip	1940	1971		Yes	permanently removed from ministry
C.PP.S/ Precious Blood	Urbanic	James	1944	1971		Yes	permanently removed from ministry

Clergy who have served in Diocese of KCSJ found by the Diocesan Bishop to be unsuitable for ministry out of concern for the safety of our youth:

- Thomas Cronin, diocesan; born 1943 and ordained in 1969; retired
- Stephen Muth, Eparchy of Parma; born 1949 and ordained in 1982; removed from ministry
- Michael Rice, diocesan; born 1939 and ordained in 1964; retired

Clergy included in settlements without legal proceedings' determination nor IRB review assessment:

- John Baskett
- James Lawbaugh, CM
- *(Brother) Earl Johnson, OFM Cap, though not a cleric as a priest or deacon but in settlement

Additional references of clergy who have

- served in the territory of Kansas City – St. Joseph, but have allegations elsewhere;**
- have been assessed by the other diocese or religious community's jurisdictional file review process; and**
- been identified upon a list by leadership of a diocese or religious community include the following:**

On Springfield – Cape Girardau list:

<http://dioscg.org/wp-content/uploads/16DioPriestsAccusedR031819.pdf>

- Eugene Deragowski, ordained in 1948 and died in 1981
- Mark Ernstmann, ordained in 1951 and died in 2013
- John Rynish, ordained in 1943 and died in 2001

On Jefferson City list:

https://diojeffcity.org/wp-content/uploads/2019/04/Credibly_Accused_12.16.2018.Parish_packet_v3.pdf

- John DeAngelis, ordained in 1944 and died in 1989

On Conception Abbey, OSB Benedictines list:

<https://www.conceptionabbey.org/monastery/credible-allegations/>

On Jesuits of U.S. Central and Southern Province, S.J. list:

<http://jesuitscentralsouthern.org/Story?Feature=-List-of-Jesuits-with-Credible-Accusations-of-Sexual-Abuse-of-a-Minor&TN=PROJECT-20181130120107050811032329>

St. Louis

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Archdiocesan Clergy With Substantiated Allegations Of Sexual Abuse Of A Minor



Message from Archbishop Carlson

Archbishop Robert J. Carlson addresses the faithful of the Archdiocese of St. Louis regarding the release of the list of names of archdiocesan clergy with substantiated allegations of sexual abuse of a minor.

July 26, 2019

Dear Friends in Christ,

Last September, I promised to publish the names of clergy who have had substantiated claims of sexual abuse of minors against them. Today, I am fulfilling that promise.

It will be painful for all of us to see the names of clergy accused of behavior we can barely allow ourselves to imagine. But publishing their names is the right thing to do.

For years, victims have carried the burden of the crimes committed against them. In talking with many of them, I have witnessed the devastating impact on their lives and the lives of their loved ones.

Publishing these names will not change the past. Nothing will. But it is an important step in the long process of healing. And we are committed to that healing.

This list, which is published below, is the result of a long and extensive investigation conducted by a third-party agency staffed with skilled investigators, formerly of the FBI and state law enforcement. The results were provided to the [Archdiocesan Review Board](#)—a board composed of a majority of lay members who are not employed by the Archdiocese of St. Louis. The Review Board produced the list and shared it with me for final review. I have accepted the results of this investigative process.

Please be assured that no priest or deacon of the Archdiocese of St. Louis against whom there has been a substantiated claim of sexual abuse of a minor is currently serving in ministry. Important facts regarding each member of the clergy who is named, including their status within the Church, are detailed on this list.

The list is also published in a special edition of our archdiocesan newspaper, *St. Louis Review*, and a copy of this edition is being circulated to Catholic households in the Archdiocese of St. Louis, regardless of whether that household has a subscription. Additionally, the list is being shared with the Missouri Attorney General. The Archdiocese of St. Louis will continue to work in full transparency with the Attorney General's office throughout its review of clergy personnel records, which is ongoing, to ensure that any new information regarding allegations of sexual abuse of minors by clergy is considered and handled appropriately.

I strongly encourage anyone who has yet to share their story of abuse to please come forward to the local and state authorities. I also ask that anyone who has knowledge of sexual abuse of minors or misconduct by a member of the clergy, an employee or volunteer of the Archdiocese of St. Louis, call the Office of Child and Youth Protection at 314-792-7704. The names of any additional clergy who are found to have substantiated claims of sexual abuse of minors against them, based on new information, will be added to this list.

The archdiocese has many resources in place to support victims. Numerous steps have also been taken to strengthen and enhance procedures to ensure that our children are protected. More information about these initiatives and resources can be found on the [Promise to Protect webpage](#).

I pray, and I ask you to pray with me, to our blessed Mother Mary: *Mother of mercy, help us by your prayers. Help victims to heal. Help the Church to be purified. Help bishops and priests to repent, to return to Jesus with a purified faith, and become instruments of His salvation.*

God continues to call all of us to Him through His Church. I ask all of you to join me in heartfelt prayer, with the Eucharist in mind, that this work will help bring peace to the victims and their families. I pray that He will help us all remain vigilant in righting past wrongs, fulfilling our Promise to Protect, and restoring trust in His Church, its leadership and His divine plan for salvation.

I pray that, in this moment, we will be rich in the healing power of Jesus, rise out of the darkness of this tomb, grow stronger in the light of His love and mercy, and praise Him unceasingly for His promise of eternal life.

Sincerely yours in Christ,



Most Reverend Robert J. Carlson

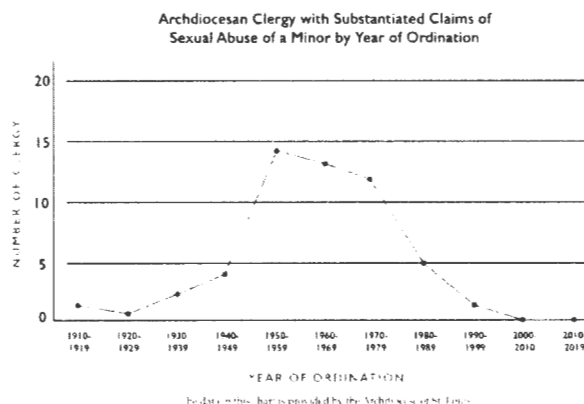
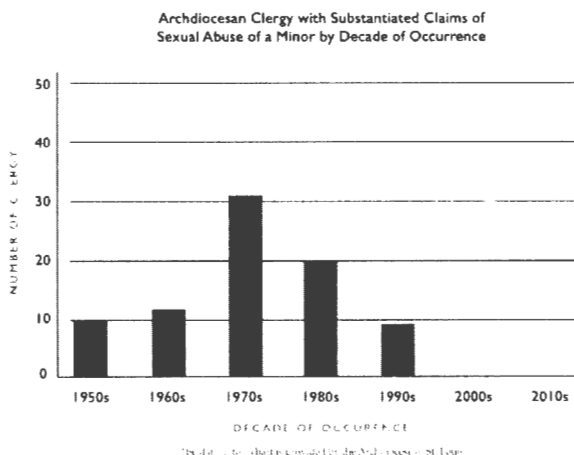
Archbishop of St. Louis

Important Highlights

No archdiocesan clergy member against whom there has been a substantiated allegation of sexual abuse of a minor is currently in ministry.

There have been no substantiated allegations of sexual abuse of a minor alleged to have occurred after 2002.

In keeping with the requirements of the Charter, any archdiocesan employee or volunteer (clergy or lay) who is found to have a substantiated allegation of sexual abuse of a minor is removed permanently from ministry and/or employment.



List Of Archdiocesan Clergy With Substantiated Allegations Of Abuse

The archdiocesan clergy listed below have been found to have substantiated allegations, regarding either sexual abuse of a minor or child pornography, against them. For the purposes of this list, a "substantiated allegation" is an allegation that is determined to be more likely true than not true, based on all facts and data related to the case that are available and accessible.

A characterization of an allegation in this list by the archdiocese as "substantiated" is not equivalent to a finding by a judge or jury that a cleric is liable or guilty for sexual abuse of a minor under civil or criminal law.

This list is a result of a long and extensive investigation conducted by a third-party agency staffed with skilled investigators, formerly of the FBI and state law enforcement. The results were provided to the [Archdiocesan Review Board](#)—a board composed of a majority of lay professionals who are not employed by the Archdiocese of St. Louis—which produced the list. The results of the investigation were accepted by Archbishop Robert Carlson.

The list is divided into four categories:

- Clergy of the Archdiocese of St. Louis with substantiated allegations of sexual abuse of a minor
- Clergy of the Archdiocese of St. Louis with substantiated allegations of sexual abuse of a minor, first allegation made after clergy death
- Clergy from other dioceses ([extern clergy](#)) who served in the Archdiocese of St. Louis and have substantiated allegations of sexual abuse of a minor
- Clergy with substantiated allegations of possession of child pornography

List of Archdiocesan Clergy with Substantiated Allegations of Sexual Abuse of a Minor

No.	Last Name	First Name	Year of Ordination	Date of Death	Status
1	Babka	Robert H.	1968	2013	Removed from ministry, deceased
2	Beckman	Dcn. Carl	1986		Removed from ministry

No.	Last Name	First Name	Year of Ordination	Date of Death	Status
3	Beine	James A.	1967		Removed from ministry; laicized
4	Brinkman	Don G.	1967		Removed from ministry
5	Byrne	Maurice	1943	1993	Deceased
6	Campbell	John R.	1958		Removed from ministry
7	Campbell	Michael A.	1979		Removed from ministry
8	Christian	Norman H.	1961	2004	Removed from ministry; deceased
9	Cooper	Thomas T.	1955	2003	Removed from ministry; deceased
10	Creason	Hubert E.	1958	2006	Removed from ministry; deceased
11	Fitzgerald	Alfred J.	1966		Removed from ministry
12	Funke	James A.	1974		Removed from ministry; laicized
13	Ghio	John J.	1980		Removed from ministry
14	Goellner	Glennon J.	1950	2007	Removed from ministry; deceased
15	Graham	Thomas J.	1960	2019	Removed from ministry; deceased
16	Gummersbach	James L.	1954	2014	Removed from ministry; deceased
17	Heck	Donald H.	1963	2015	Removed from ministry; deceased
18	Hederman	Kevin F.	1975		Removed from ministry
19	Heier	Vincent A.	1977		Removed from ministry; retired
20	Huhn	Bernard	1952	2000	Ministry restricted; deceased
21	Hummel	Dcn. Fred	1986		Removed from ministry; laicized
22	Johnston	Robert F.	1962		Removed from ministry;
23	Kaske	John J.	1956		Removed from ministry; laicized
24	Keaty	Jerome	1962	1999	Deceased
25	Kelley	William A.	1977	2013	Removed from ministry; deceased
26	Kertz	Louis	1948	1985	Deceased
27	Kopff	Marvin C.	1963	2006	Removed from ministry; deceased
28	Kuchar	Bryan M.	1993		Removed from ministry; laicized
29	Lessard	Joseph P.	1952	2014	Removed from ministry; deceased
30	Lippert	Alexander W.	1956	2000	Removed from ministry; deceased
31	McClintock	Dennis J.	1973		Removed from ministry; laicized
32	McDonough	Roger	1965	1985	Deceased
33	McGrath	Michael	1974		Removed from ministry; laicized
34	Marschner	Aloysius J.	1936	2004	Ministry restricted; deceased
35	Obmann	Russell	1951	2000	Removed from ministry; deceased
36	O'Brien	Joseph M.	1957	2012	Removed from ministry; deceased
37	Pavlik	James J.	1963	2015	Removed from ministry; deceased
38	Rehme	Albert A.	1956	2012	Removed from ministry; deceased
39	Ross	Joseph D.	1969		Removed from ministry; laicized
40	Schierhoff	Lawrence C.	1952	2008	Removed from ministry; laicized
41	Seidel	Michael L.	1987		Removed from ministry; laicized
42	Straub	Donald J.	1975		Removed from ministry; laicized
43	Toohey	Michael W.	1967		Removed from ministry; laicized
44	Valentine	Leroy	1977		Removed from ministry
45	Westrich	Keith M.	1981		Removed from ministry
46	Wolken	Gary P.	1993		Removed from ministry; laicized
47	Yim	Robert J.	1974		Removed from ministry; laicized
48	Zacheis	Dennis B.	1975		Removed from ministry

List of Archdiocesan Clergy with Substantiated Allegations of Sexual Abuse of a Minor that were first accused After Death ²

No.	Last Name	First Name	Year of Ordination	Date of Death	Status
1	Blase'	Francis	1941	1977	Deceased
2	Bockelmann	Albert	1939	1975	Deceased
3	Craig	Walter	1923	1971	Deceased
4	Galovich	George W.	1971	2012	Deceased
5	McLain	James	1957	1998	Deceased
6	O'Flynn	Bernard	1917	1981	Deceased
7	Poepperling	William	1934	1983	Deceased
8	Wieberg	John	1918	1963	Deceased
9	Zimmer	Ralph	1943	1981	Deceased

² The clergy on this list had already passed away when the allegations against them were made. As such, these clergy did not have an opportunity to respond to the allegations or provide a defense.

List of Extern Clergy with Substantiated Allegations of Sexual Abuse of a Minor ³

No.	Last Name	First Name	Year of Ordination	Date of Death	Status
1	Ferraro	Romano J.	1960		Removed from ministry; laicized
2	Frobas	Victor A.	1966	1993	Removed from ministry; laicized; deceased
3	Fleming	Mark	1980		Laicized
4	Lenczycki	Frederick	1972		Removed from ministry; laicized
5	Roberts	Kenneth J.	1966	2018	Removed from ministry; deceased
6	Stauber	James F.	1959	2010	Removed from ministry; deceased

¹ Extern clergy refers to clergy members that were not from the Archdiocese of St. Louis, but served in the Archdiocese of St. Louis for a period of time.

³ The clergy on this list have substantiated allegations of sexual abuse of a minor that occurred in the Archdiocese of St. Louis or elsewhere.

List of Archdiocesan Clergy with Substantiated Allegations of Possession of Child Pornography

No.	Last Name	First Name	Year of Ordination	Date of Death	Status
1	Grady	James P.	1977		Removed from ministry; laicized
2	Hess	John P.	1983		Removed from ministry
3	Vatterott	William F.	2003		Removed from ministry; laicized

Promise To Protect

Visit the Promise to Protect homepage to learn more about the steps our archdiocese has taken and continues to take for the protection of children and vulnerable adults.

Springfield – Cape Girardeau



THE DIOCESE OF SPRINGFIELD-CAPE GIRARDEAU



To the Faithful of the Diocese of Springfield- Cape Girardeau,

In August of 2018, I wrote a letter to each of our Catholic households, expressing my sorrow for the hurt inflicted upon anyone in the Diocese by the clergy sexual abuse scandal. Again, I take this opportunity to offer my sincere apology. I echoed in that same letter, that, in the spirit of accuracy, transparency, and truthfulness, I directed an independent review of diocesan personnel files of all clergy, diocesan and religious, so that we could have an accurate accounting for the 63-year history of the Diocese of Springfield-Cape Girardeau. With this letter, I fulfill my promise to you for a full report on the process.

Since that time, a thorough and comprehensive review of the files of all active and deceased diocesan clergy has taken place. Taking more than six months to complete, this included a literal review of each and every note, letter, and document that was available in each man's file. There are cases of allegations of abuse and reports of concerns involving clergy that were previously made decades ago that may not have been found, at that time, to meet the standard of a "credible accusation." Prior to the 2002 US Catholic Bishops' "Charter for the Protection of Children and Young People," the procedures for addressing these allegations and reports were much different and far less clear than they are today.

Often times, these allegations and reports of concerns are made with one person's statement after the accused has died and is unable to participate in the investigation. Frequently, the only evidence available in these allegations or reports was the statement of the reporting person—who may or may not actually be the alleged victim/survivor—with varying degrees of details concerning the alleged abuse.

We require, and clearly state in our policies and published and printed materials, that any known or suspected abuse must first be immediately reported to the Child or Adult Abuse and Neglect Hotlines and/or the appropriate legal authorities, even when the victim/survivor may request that no action be taken. We are committed to safe environments for all of our people, and if you've been harmed by anyone: please come forward. The Diocese makes available multiple platforms by which one may report abuse, including telephone, Email, USPS letter, or our Web-based "TIPS" reporting portal on the diocesan Website (www.dioscg.org). These reports go directly to the Bishop and the Director of Child and Youth Protection.

Standards of examination

When a report of sexual misconduct is received by the Diocese, the Safe Environment Review Board uses a "Semblance of Truth" standard— that is, a "reason to believe or reasonable cause to suspect," rather than the "preponderance of evidence" standard to determine "credibility." This offers a threshold where time, person, place, and plausibility—"Could this have happened?"—is carefully considered by the Safe Environment Review Board to determine actions related to an allegation or reported concern in order to make its final recommendations to the Bishop. Consequently, you will see in our public releases "an allegation has been received" rather than the term "credible accusation," as there is not always sufficient evidence to thoroughly investigate and determine the truth of the allegations or reports.

If you have access to the diocesan Website, you will find there a public list of the names of 16 diocesan priests against whom accusations of the abuse of a minor were deemed to have a semblance of truth. In the interest of transparency and in accordance with my commitment to you, I issue the following list of personnel who have served in the Diocese with allegations of abuse against a minor that have been determined to meet the criteria of a semblance of truth, including religious order priests whose allegations were reported to us by their religious order. All but three of these instances of abuse that are alleged to have occurred before the 1990s, and none involve anyone in active ministry:

Diocesan priests with allegations

Name	Assignment	Incident Date/Report Date	Status
Brath, John	Webb City	1970s/2015	RFM 2010/ D 2014
Chambers, Leonard	Lebanon	1977/1982, 1998, 2013	RFM 1998/L 2006
Craig, Walter	New Madrid	1950s/2002	D 1971
Deragowski, Eugene	Conway, West Plains [DKCStJ]	1950-60s/2006	D 1981
Donovan, William	Glennonville	1968/2013	D 1975
Ellinger, Wally	Caruthersville	1960s/1994	LP 1975/L 1976/D 2007
Ernstmann, Mark	Springfield	1973-4/2002, 2018	RET 2004/D 2013
Gregovich, Larry	New Madrid	1982-5/1992	RFM 1992/D 2017
Lutz, Fred	Cape Girardeau	1972/2006	RET 2011/MR 2019
McHugh, Paul	Branson	1981-82/2002	D 1983
Rynish, John	Springfield	1970s/2018	D 2001
Schneider, Stephen	Joplin	2006/2006	RFM 2006/D 2016
Shibley, Amel	Sikeston	1980s/1992, 1995	RET 1995/RFM 1998/D 2002
Wells, John	New Madrid	1962/2017	D 1972
Wyrsh, Louis	Poplar Bluff	1960s/2007	LP 1973/L 1989/D 1997

Diocesan priest restricted in ministry pending investigation of allegation

Marquart, Ernest	Caruthersville	1980s/1980s	RET 2012/MR 2019
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Religious order priests with allegations

Since the establishment of the DSCG in 1956, we have relied on the generosity of various religious orders to assist in staffing parishes and various Catholic ministries. The names of those for whom such allegations have been received appear below along with their current status.

Name	Assignment	Incident Date/Report Date	Status
Juda, Stephen	(CRResurrectionist) Salem	1972/2004	D 2006
Meyer, Thomas Gregory	(OMI) Carthage	1969-70/2012	D 2012
Parrott, Thomas	(CM-Vincentians) Cape Girardeau	1966/2010	RET 1987/D 1996
Probstfield, Edgar	(OSB-Benedictine) Spfd	1970s/2014	D 2007
Santo, Mark	(OSM-Servites) Ironton	1960s/2018	D 2013
Twardochleb, Emil	(OMI) Carthage	1971-5/2015	D 1976
Vedder, Bernard	(OMI) Carthage	1960s/1995	L 1995

Order priests who served in DSCG with reported abuse outside of the DSCG

Barron, Wayne	(CMF-Claretian)	1972/2003	RFM 1990s
Boeding, Damian*	(OSB-Benedictine) [Allegations in IA, MN]	1964-8/1992, 1994	RET 1988/D 2003
Charland, Michael	(OMI) [Dio of Belleville, Arch-St. Paul]	1970s/2018	L 1989/ D 2004
Farris, John	(CM-Vincentian) [Dio. of Orange]	1951-4/2003	D 2003
Fitzgerald, J. Vincent	(OMI) [Dio. of Duluth, MN]	1964, 1970s/2010	D 2009
Lause, Richard	(CM-Vincentian) [Lemont H.S. Sem., IL]	1987/1988, 2003	RFM 2003
Munie, Orville	(OMI-Oblates of Mary Imm.)	1971-5/2015	D 1993
Paiz, William	(CMF-Claretian) [Dio. of FTW]	1982-7/2012	RFM 2012
Ruhl, John	(CM-Vincentian) [Dio. of Orange]	1970-82/1992, 2004	RFM 1992
Schulte, Daniel	(CM-Vincentian) [Chicago]	2006/2006	RFM 2006
Zimmerer, Francis	(OSB-Benedictine) [Dio. of FTW]	1978/2008, 2015	D 1983

*Former OSB; incardinated into DSCG in 1970

Order priests who resided in DSCG—removed from ministry by Order, investigation ongoing

Turnbull, John	(OFM-SJBP-Franciscan Friars) Ava; [Indiana]	1970s/2005	RFM 2005/D 2017
Willenborg, Henry	(OFM-SHP-Franciscan Friars) Ava; [Quincy, IL; Ashland, WI]	1970s/2009	RFM 2009

Priests from other dioceses (extern priests) that have allegations outside of the DSCG

Baskett, John	[US Air Force, DKCStJ]	1975/2018	LP 1975/D 1995
O'Brien, Thomas J.	[DKCStJ]	1950-4/2013	D 2013

Priest from other diocese that served in DSCG prior to 1956

Wieberg, John	Charleston [ArchStL]	1942-5/2004, 2018	D 1963
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Codes

ArchStL	Archdiocese of St. Louis	L	Laicized
D	Deceased	LP	Left priesthood
DJC	Diocese of Jefferson City	MR	Ministry restricted
DKCStJ	Diocese of Kansas City-St. Joseph	RET	Retired
DSCG	Diocese of Springfield-Cape Girardeau	RFM	Removed from ministry

Settlements/Finances

The following is a summary of expenses from 1986 to date. All accounting ledgers for activity prior to 1986 were lost in a flood at The Catholic Center in 1989. As far as we know at this time, there were no claims paid from the creation of the Diocese in 1956 up to the early 1980s.

There were eight claims settled and paid by the diocese at a cost of \$355,000 using unrestricted cash reserves. There were three claims paid by our insurer, Catholic Mutual Relief Society, at a cost of \$92,500. So, settlements total **\$447,500**. Additionally, the Diocese offered victim assistance for prescription costs (\$35,836), counseling (\$28,425), and future funeral expenses (\$7,011), for a total of **\$70,448**. Also of interest may be the legal fees to date, necessary to the handling of claims (\$63,541) and the discovery fees related to the review of personnel files and the release of the information noted in this letter (\$125,796), total **\$189,337**. ***Absolutely no funds have come from any parishes or the Diocesan Development Fund or the Capital Endowment Campaign.***

As much as we would like to conclude this process and end of the pain of the victims of clergy sexual abuse, this effort is ongoing, as victims/survivors very likely remain among us who have been reluctant to make a report, perhaps burdened with the injury and suffering beneath the silence, shame, and the guilt associated with their trauma. However, the shame and guilt felt by any survivor/victim, does not belong to them: it belongs to those who abused them and anyone who failed to take appropriate actions once the report was made. We pray for strength and healing for all who have come forward and for those who have yet to do so.

Accountability & mandated reporting

The Safe Environment Procedures for the Diocese of Springfield-Cape Girardeau and relevant policies related to keeping our children and adults safe, are available for review under the Child and Youth Protection ministry tab on the diocesan Website at www.diosecg.org. There are a few key points that I want to mention that I sincerely hope reassure you:

- ◆ We mandate safe-environment training for all clergy, adults (employees and all volunteers), and our youth enrolled in our schools and PSR programming through VIRTUS—many of whom are required to complete monthly updates.
- ◆ All adults (clergy, religious, seminarians, volunteers, and employees) undergo background checks and sign an annual Code of Conduct, which includes adherence to “The Safe Environment Procedures,” “The Guidelines for the Use of Technology, Email and Social Media” and “The Safe Student Policy Addressing Harassment, Discrimination, and Violence by Employees, Other Students, or Third Parties.”
- ◆ The Diocese will place on Administrative Leave and/or suspend any priest, employee, or volunteer, who has been alleged to have abused a child, or an adult for that matter, and complete and/or cooperate with any necessary investigations (internal and external). When deemed necessary, the Diocese will permanently remove the clergy, employee, or volunteer from ministry. We take every allegation seriously, and we hold ourselves to a high standard of behavior.

Diocesan Safe Environment Review Board

I mentioned it before, but I want to reiterate: I am assisted on all matters related to child and youth protection by an independent Safe Environment Review Board comprised of mostly lay men and women, your neighbors in southern Missouri, who volunteer their time to this noble effort and who bring relative vocational experience to this important mission. These members include a retired federal law enforcement investigator who has a law degree; a retired police officer; a retired psychologist; a retired Catholic school principal; an investigator for a federal legal services agency; a currently-licensed and active mental health professional; a current executive director of a large non-profit organization; a university professor; an ethics advisor for a large healthcare agency, and one priest. The Diocese is blessed by their expertise and commitment to the protection of our youth.

The abuse crisis has wounded a great many people in our Church and community. The Church wants to stand with anyone who suffers. We want to minister to you. We pray for all who have been directly and indirectly harmed by a priest or deacon in the Church, or by anyone entrusted with their care. I hope for the Church your forgiveness. The Diocese is holding three upcoming Healing Masses: I encourage you to attend as we come together to support and inspire one another in healing broken hearts, burdens of pain, and promises of grace:

Healing Masses will be held on:

- **Wednesday, April 24**, at 7 p.m., in **St. Francis De Sales Church**, in **Lebanon**.
- **Monday, June 24**, at 7 p.m., in **St. Michael the Archangel Church**, in **Fredericktown**.
- **Monday, August 26**, at 7 p.m., in **St. Mary Church**, in **West Plains**.

It is my hope that this letter assures you and reinvigorates your confidence in our beloved local Church. Please, let us continue to hold one another in prayer. I am,



Sincerely yours in Christ,

+ *Edward M. Rice*

The Most Rev. Edward M. Rice
Bishop of Springfield-Cape Girardeau

A Prayer for Healing Victims of Abuse

*Holy Spirit, comforter of hearts,
heal your people's wounds
and transform our brokenness.
Grant us courage and wisdom, humility and grace,
so that we may act with justice
and find peace in you.
We ask this through Christ, our Lord. Amen.*

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Revised April 3, 2019

June 2019 Progress Report and Annual Report
National Review Board
United States Conference of Catholic Bishops



National Review Board for the Protection of Children and Young People
3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-5413 • FAX 202-541-5410

2019 Progress Report to the Body of Bishops

Francesco Cesareo, Ph.D., Chair

June 2019

Good morning your Eminences and your Excellencies.

For the last year, the Church in the United States has been experiencing a period of intense suffering. We find ourselves at a turning point, a critical moment in our history which will determine in many ways the future vibrancy of the Church and whether or not trust in your leadership can be restored. Because of the actions or inactions of some bishops, some in the general public have lost confidence in the body of bishops, despite the sincere efforts of many of you. I have no doubts that the Holy Spirit will transform your work during this meeting and beyond to create a Church that is more accountable, more committed to a genuine reform that rests on a change in the culture of leadership, and more willing to embrace, what Pope Benedict XVI termed, the co-responsibility of the laity for the Church.

Last November, the National Review Board proposed a series of recommendations to this body. Those recommendations were made to help restore credibility and improve dioceses' methods to protect and heal. The NRB is grateful for those of you who worked diligently with your staff to address some of the concerns we raised.

Some of you have worked with external experts and lay-led review boards to conduct file reviews and publish lists of credibly accused clergy. Some have held listening sessions, responded to the questions and concerns of the faithful, and considered their input. Policies regarding allegations, including those involving misconduct with adults, were reviewed and improved with the help of local boards and outside consultants. Masses and other opportunities for survivors to receive God's unconditional love were offered. Ongoing support for therapy and counseling was also provided.

You opened lines of communication with the people of God regarding what has already been done, and what still needs to be done concerning abuse in the Church. Some of you issued statements calling for transparency and accountability at the national level, taking concrete steps to ensure those principles were embraced in your own dioceses. In some instances, independent lay boards have been established to address allegations of misconduct by the bishops in the diocese. We commend those bishops who have taken steps on their own within their dioceses in response to the dual crisis of the last year. Those efforts have provided hope as you exhibited a new style of leadership. However, until there is a uniform response and mechanism across all dioceses, regardless of who the ordinary may be, we cannot be confident that the response to this dual crisis is adequate or sustainable over time.

In November, the NRB also offered recommendations to this body that could only be addressed at the national level. Among them were improvements to the audit and *Charter*. Despite ongoing challenges, positive momentum has been evident in the Church since the initial approval of the *Charter* and the audit. Any delay in revising the *Charter* or implementing an enhanced audit would not only put children at risk, but could signal a step backward in the Church's efforts.

Specifically, the audit should be more thorough and independent, and the *Charter* should be revised immediately to explicitly include bishops and demand for greater accountability.

The audit is the primary means of holding yourselves accountable in fulfilling your responsibilities to protect and heal. It is also a means for establishing your credibility with the faithful.

For the last few years, an Audit Workgroup, composed of three bishops from the Committee on the Protection of Children and Young People and three lay members of the National Review Board, has been developing a framework for an improved audit which would potentially be utilized during the next audit cycle beginning in 2021.

Among the key deliberations of the Audit Workgroup, from the perspective of the NRB, was the need for the audit process to be truly independent.

Your dioceses have received the same basic audit for close to 10 years. A more thorough and independent audit process would more effectively ensure the accountability of your diocesan procedures in conformity with the *Charter*. A strengthened audit would provide a means for improving your diocese's existing methods to protect and heal. Virtually all your dioceses, including those where problems came to light under the microscope of the media and attorney generals, have easily passed the audit for years since the bar currently is so low. Now is the time to raise the bar on compliance to ensure the mistakes of the past are not repeated.

While more thorough, such an audit should not be a "gotcha" audit. Common standards and guidelines should be developed by the auditors for what is meant by compliance for each Article. There should be standards for compliance that are uniformly and clearly understood across all dioceses.

Article 9 of the *Charter* states that the audit's method, scope, and cost are to be approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. While the final approval is issued by the Administrative Committee, as much latitude as possible should be given to the auditing firm in terms of developing and implementing the audit process. The audit process itself should be developed by the audit vendor, not bishops. Auditors should have the independence to ask the questions that need to be asked, examine the documents they determine need to be examined, and probe where they feel they need to probe to answer questions, resolve issues, and determine compliance with each article of the *Charter*.

For the sake of increasing credibility and transparency, as well as nurturing a culture of protection, the NRB strongly urges you to support an independent and improved audit process immediately. If dioceses are handling the implementation of the *Charter* adequately then there should be no objection to an enhanced audit process. Any delay in implementing a new audit process would be detrimental. We cannot afford another crisis as we have just experienced.

The audit is only as strong as what it is measuring compliance with – the *Charter*. The 2018 *Charter* revisions, which were minimal despite the more substantive recommendations of the NRB, included a statement calling for its review in 7 years. With all that has happened over the last year, we cannot wait until 2025. The NRB was happy to hear of Cardinal DiNardo's support for intensifying the *Charter* in his statement following the February meeting in Rome. This is particularly important in light of the passage of the recent Motu Proprio, *You are the Light of the*

World. Special care must be taken to ensure the *Charter* mirrors, to the extent possible, the language and spirit of that document, while at the same time reflecting our reality in the United States.

Revisions that were proposed by the NRB in the past should also be reconsidered, such as the need for all allegations of sexual abuse of minors to be reported to diocesan review boards, the need for those review boards to meet annually to assist with diocesan policy reviews, a consideration of ongoing supervision and monitoring of offenders who have not been laicized, and the inclusion of parish audits. These revisions, among others, will help your dioceses enhance their processes through greater lay participation, and provide you with additional mechanisms for effectively managing allegations and offenders. While it has been argued that the *Charter* should not be prescriptive, we have seen too many instances where the looseness of the *Charter* has allowed for problems that could have been avoided. The principles of high reliability, which have been introduced to dioceses across the country, can also serve as a lens through which the *Charter* can be analyzed. The NRB looks forward to assisting in the *Charter* revision process immediately.

The Motu Proprio *You are the Light of the World*, as well as the forthcoming document, *Acknowledging Our Episcopal Commitments*, begs the question of whether these new processes, which involve bishops' accountability, should be audited as well. Why should allegations involving priests and deacons be subject to the audit but not those involving bishops? Common sense, especially after experiencing the events of last year, tells us that oversight of these processes is necessary. Bishops should be held to the same standards as other clerics.

Last November, several Action Items designed to hold bishops accountable were developed by the USCCB. The NRB recognizes the amount of preparation and work that went into producing these concrete measures and is extremely grateful for the expedient efforts of all involved. They included the creation of standards of accountability for bishops, a third-party reporting system, and the establishment of a special lay commission to review allegations against bishops. The NRB also supports the more recently developed protocols regarding non-penal restrictions on bishops. The NRB did not support the concept of the metropolitan model for handling allegations against bishops that emerged from the assembly floor.

While the NRB commends the Holy See for taking such a strong step forward in terms of holding all clerics accountable for abuse, the NRB remains uncomfortable with allowing bishops to review allegations against other bishops as this essentially means bishops policing bishops. The metropolitan will gain greater credibility if a lay commission is established when allegations come forward to assist in the process as has been the case with lay review boards on the local level. Lay involvement is key to restoring the credibility of the Church which includes a commitment to transparency. Not involving laity with competence and expertise in leading the review process would signal a continuation of a culture of self-preservation that would suggest complicity. We already have specific examples of the effective use of a lay board to investigate allegations against a bishop in the Diocese of Wheeling-Charleston in West Virginia and the Archdiocese of New York.

Article 13 of the Motu Proprio cites that the bishops of the province *may* include qualified persons including laity in the investigatory process. The NRB urges that this *must* be the case in the United States through the establishment of an ad hoc lay commission, either on the national or local level.

Furthermore, there is no reference in the *Motu Proprio* to the role of the laity in assessing the credibility of allegations and providing advice on the suitability of an accused bishop for ministry. The *Essential Norms for Dealing with Allegations*, which are particular law for the Church in the United States, as well as the *Charter*, call for a majority lay review board to review allegations against priests and deacons. A similar requirement should be in place regarding allegations against bishops.

You have a great opportunity to lead by example and help show dioceses and Episcopal Conferences around the world not only how important it is for lay involvement to ensure greater accountability and transparency, but also how laity and the episcopacy can be co-responsible for the Church's well-being.

A review board whose membership includes laity must be tasked with the review of allegations against bishops to restore the trust of the faithful in the bishops and even in the Holy See's own processes for holding bishops' accountable. All allegations should be immediately reported to the civil authorities first and subsequently to a third-party reporting system.

The Metropolitan should not be the sole gate-keeper of allegations that come forward. This could lead to the same type of mishandling of an allegation as we saw in the case of the former Archbishop McCarrick.

The NRB remains hopeful that this body will demonstrate its commitment and desire to embrace the principles of transparency, accountability, and independence – even while abiding by the new *Motu Proprio*. In fact, there is nothing within the *Motu Proprio* itself that limits the ability of the USCCB to do so. Fortunately, the Holy See seems to have allowed for flexibility in the specific implementation of these standards at the local level.

I cannot end my presentation without addressing what remains on the minds of the entire Church in the United States – the McCarrick situation.

During last year's November meeting, a resolution was proposed in which the bishops of the USCCB would have recognized the ongoing investigation of the Holy See into the case of former-Cardinal McCarrick, but at the same time encouraged the Holy See to release soon all the documentation that could be released consistent with canon and civil law regarding his misconduct.

It was the type of symbolic statement that would have helped to restore the laity's confidence in the body of bishops. It was also the type of statement the laity needed to hear at that time. Mainly, that like them, their bishops wanted the truth to emerge regarding the allegations of abuse involving Theodore McCarrick.

As we all know, the resolution was ultimately rejected. Some bishops raised concerns about what type of signal this resolution would send. Some thought the resolution would make it seem as if the bishops of the United States were creating divisions, especially with the Holy See. Some also thought it would show distrust in the Holy See, including Pope Francis.

The salvation of souls is the supreme law of the Church. It is more important to heal the rift with the people of God than any perceived divisions you might have with the Holy See, as the Holy Father himself stated "you must be shepherds who smell like your sheep." Care for your people must be at the forefront when dealing with this issue.

While Msgr. Figueiredo's recent disclosures has shed some light on this situation, we still await the conclusions of the Holy See's investigation as we approach the one-year mark of the eruption of this crisis. Perhaps they will soon emerge. Until then, questions remain unanswered. Who knew what, and when? How did McCarrick rise to the rank of a Cardinal? An update on the status of the investigation is much-needed.

In his *Motu Proprio*, the Holy Father called for "a continuous and profound conversion of hearts [...] attested by concrete and effective actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church's mission. This becomes possible only with the grace of the Holy Spirit poured into our hearts, as we must always keep in mind the words of Jesus: '*Apart from me you can do nothing*' (Jn 15:5). Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future."

On behalf of the National Review Board, I thank you for the privilege and opportunity to assist you in addressing this crisis. The NRB is grateful to the commitment and leadership of many of you this past year, especially as you took concrete action, and called for meaningful reform including the active participation of the laity. We pledge to use our expertise and knowledge to provide advice, counsel, and support to you as you continue to address this issue in a way that will give people confidence in your leadership. We will continue to pray for you as you carry out your ministries to the faithful. Thank you.

2018

ANNUAL REPORT

FINDINGS AND RECOMMENDATIONS



SECRETARIAT
OF CHILD
AND YOUTH
PROTECTION

NATIONAL
REVIEW BOARD

UNITED STATES
CONFERENCE OF
CATHOLIC BISHOPS

JUNE 2019

Report on the Implementation of the

CHARTER FOR THE
PROTECTION OF
CHILDREN AND
YOUNG PEOPLE

2018 ANNUAL REPORT

FINDINGS AND RECOMMENDATIONS

JUNE 2019

*Report on the Implementation of the
Charter for the Protection of Children and Young People*

SECRETARIAT OF CHILD
AND YOUTH PROTECTION

NATIONAL REVIEW BOARD

UNITED STATES CONFERENCE
OF CATHOLIC BISHOPS
WASHINGTON, DC



The *2018 Annual Report on the Implementation of the “Charter for the Protection of Children and Young People”* was prepared by the Secretariat of Child and Youth Protection for the National Review Board and the United States Conference of Catholic Bishops (USCCB). It was authorized by the USCCB President, Cardinal Daniel N. DiNardo. It has been directed for publication by the undersigned.

Msgr. J. Brian Bransfield
General Secretary, USCCB

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Please note that the following has been corrected since the original printing of the report:

- P. 13 in the fourth paragraph—data was collected from 122 dioceses and eparchies (not 125)
- P. 13 in the fourth paragraph—three eparchies did not participate in either type of audit (all dioceses participated)

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Office of the President

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His Eminence Cardinal Daniel N. DiNardo
Archbishop of Galveston-Houston
President

Preface

I am pleased to present this sixteenth annual report on the progress of implementing the *Charter for the Protection of Children and Young People*. The end of the 2018 audit year has marked a turning point in the Church in the U.S. regarding the sexual abuse crisis. During the summer of 2018, the scandal of former Cardinal-Archbishop McCarrick came to light. After that came the release of the Pennsylvania Grand Jury Report highlighting the extent of the sexual abuse crisis within the state, as well as uncovering situations that did not always put the survivor first. Additional news began to accumulate throughout the summer and into the fall.

While the bishops continue to meet and discuss next steps in greater accountability and transparency, this annual report marks the continued dedication of so many to uphold the spirit of the *Charter*. While much progress is still needed at this time, I would like to acknowledge what has been done by our priests, staff, volunteers, and consultants.. The Church is a far safer place today than when we launched the *Charter* in 2002. Programs of background checks, safe environment trainings, review boards enforcing zero tolerance policies, and victims assistance require hundreds of dedicated, professional teams with child safety as their highest priority. I extend my sincere gratitude to all who have been abused and continue to come forward to share their stories. Because of their bravery in coming forward, victim/survivor assistance and child protection are now core elements of the Church. Others wounded by abuse will continue to receive assistance and pastoral care. Children, youth and the vulnerable will continue to be protected from harm. The Church will continue to be a safer environment for everyone.

While much has been done to ensure survivor ministry and the protection of the vulnerable are core values of the Church, improvements still must be made. When it comes to the protection of young people, the question must always be “what more can be done?” We have in front of us an important opportunity. An opportunity to do better. An opportunity to be better, and to fully live out the mission of the Gospel in bringing healing to those who have been harmed, accountability and justice to those who have caused harm, and keeping children, young people and the vulnerable safe from harm.

We must continually rededicate ourselves to keeping our promise to protect and pledge to heal. Not once, not twice, but every single day. With every action we take, let us all remember to keep the survivor, the child, the vulnerable person, at the center of everything we do.



National Review Board for the Protection of Children and Young People

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27 February 2019

His Eminence
Daniel Cardinal DiNardo
President
United States Conference of Catholic Bishops

Your Eminence,

In accordance with Article 10 of the *Charter for the Protection of Children and Young People*, the National Review Board has reviewed the results of the annual compliance audit based on the on-site visits conducted by StoneBridge Business Partners for the 2018 cycle. During this audit cycle, 72 dioceses and eparchies were visited. It is important to recognize that this year's audits occurred within the context of the revelations that emerged last summer regarding former Archbishop McCarrick and the subsequent release of the Pennsylvania Grand Jury report. As you are fully aware, these events have led to both frustration and anger among the faithful in the Church, a loss of the credibility of the hierarchy, and a questioning of the efficacy of the audit itself along with a sense that the implementation of the *Charter for the Protection of Children and Young People* has been more concerned with "checking-off the box" as opposed to creating a culture of safety within dioceses. This is evidenced by the results of the audits as reported in this year's Annual Report which continue to show signs of complacency and lack of diligence on the part of some dioceses.

Despite its limitations, the audit remains the only instrument by which we can measure the efforts of the bishops to protect children and young people through the establishment of a safe environment within the Church. The audit calls the bishops to accountability and gauges the seriousness with which they are responding to the sexual abuse of minors by the clergy. It is for this reason that the National Review Board calls for a more in-depth audit, as well as ensuring the complete independence of the audit if the bishops hope to regain the trust of the laity in assuring that children and young people are indeed safe within our institutions. This will not only require a new audit instrument, but also a revision of the *Charter* that will incorporate new practices, such as parish audits, that will offer greater assurance of compliance.

While the overwhelming majority of the dioceses have participated in the audit, we have still not achieved 100% participation. Three eparchies did not participate in either the on-site or data collection audit – the Eparchy of St. Mary Queen of Peace, the Eparchy of St. Peter the Apostle, and the Eparchy of Phoenix. Consequently it is not possible to determine whether these eparchies are compliant or non-compliant with the *Charter*. Achieving 100% participation in the audit must be achieved as this will demonstrate to the laity the commitment of the entire episcopate to the protection and safety of children in the Church. In addition, the Diocese of Lincoln was found to be non-compliant with Article 7, which requires open and transparent communications to the public regarding allegations of sexual abuse of minors by the clergy, especially in those parishes that may have been affected.

It should be pointed out that, given the current climate within the Church, StoneBridge noticed a heightened sense of urgency and focus in many of the dioceses that were visited during this cycle. This was evident in the active review of priest files, the release or updating of lists of alleged abusers, and greater emphasis on discussion and transparency with parishioners in individual dioceses/eparchies. This is a welcome change which must be sustained going forward rather than a one-time response to the heightened sense of scrutiny if a lasting cultural change is to take place.

Compared to 2017, the Annual Report notes that the number of allegations, mostly historical, have significantly increased. This can be attributed to the additional allegations received in five New York dioceses as a result of the implementation of their Independent Reconciliation and Compensation programs. What is concerning are the 26 allegations by current minors (12 males and 14 females) reported in 2018. As of June 30, 2018 three of these allegations were substantiated, seven were unsubstantiated, three were unable to be proven, six were

still under investigation, two were referred to religious orders, two involved unknown clerics, and three were incidents of boundary violations not sexual abuse. These current allegations point to the reality that sexual abuse of minors by the clergy should not be considered by bishops as a thing of the past or a distant memory. Any allegation involving a current minor should remind the bishops that they must re-dedicate themselves each day to maintaining a level of vigilance that will not permit complacency to set in or result in a less precise and less thorough implementation of the *Charter*. The fact that approximately 14% of the dioceses/eparchies that had on-site visits will require a follow-up at the end of the next audit cycle is indicative of the laxity that exists in some dioceses that should cause some pause.

The NRB has consistently argued for the inclusion of parish audits in the *Charter* as the only way to determine with greater certainty not only that the diocese is compliant but also that the data being sent to the Chancery is accurate. While this requirement has not been added to the *Charter*, the Annual Report notes that slightly over half of the dioceses/eparchies visited conduct some form of parish audits on their own, either as regular practice or on an “as needed” basis. Twenty-eight of the seventy-two dioceses/eparchies visited chose to have StoneBridge conduct parish audits as part of the on-site audit. Conducting parish audits, in whatever form, will make it easier in implementing the safe environment requirements of the *Charter*. Those bishops who have conducted parish audits demonstrate their seriousness in assessing what is actually taking place in their diocese with the implementation of the *Charter* and are to be commended.

The Annual Report also notes dioceses that require some type of refresher safe environment training, as well as renewed periodic background checks, even though neither is required by the *Charter*. Over three-quarters of the dioceses visited have implemented these best practices which will contribute toward keeping the safety of children at the forefront of people’s minds, thereby ensuring a commitment to nurturing a culture of safety.

During the last several years the Annual Report has pointed out recurring concerns that speak to the issue of complacency. This year is no exception. We continue to see the failure to publish reporting procedures in the various languages in which the liturgy is celebrated; poor recordkeeping of background checks; failure to train or background check clergy, employees or volunteers who have contact with children; a high percentage of children not trained, especially in religious education programs; lack of cooperation by parishes in the implementation of safe environment requirements or responding to requests from safe environment personnel; lack of a formal monitoring plan for priests who have been removed from ministry; failure to update policies and procedures in light of the 2011 *Charter* revisions. These are just some of the concerns highlighted in this year’s Annual Report that need attention. While not widespread, the fact that in some dioceses these recurring problems are still evident points to lack of diligence that puts children’s safety at risk.

We recognize that not all dioceses have the resources they need to support their efforts at implementing the *Charter* as fully as possible. In order to address this reality, dioceses should find ways to collaborate with one another, including sharing resources, which has resulted in a stronger effort in implementing the *Charter* where this has been the approach taken.

This past year has been an unfortunate reminder of the sin and crime of sexual abuse of minors by the clergy, made more dire by the failure of leadership which enabled such abuse to occur. We know that the majority of the current bishops have seriously confronted clerical sexual abuse, which is borne out in the Annual Report. Yet, the Report also evidences areas in need of improvement that will necessitate a renewed effort in addressing this issue in a way that will require bold leadership. The members of the National Review Board commend your own commitment and leadership in calling for meaningful reform, the involvement of the laity, as well as acknowledging the expertise and the efforts of the NRB. The members of the National Review Board pledge to use our expertise and knowledge to provide advice, counsel, and support to the bishops as they continue to address this issue, as we seek to assist you in restoring the credibility of the episcopacy in nurturing a culture of safety for our children.

Sincerely yours in Christ,

Francesco C. Cesareo

Francesco C. Cesareo, Ph.D.
Chairman



Secretariat of Child and Youth Protection

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-5413 • FAX 202-541-5410

March 6, 2019

His Eminence Daniel Cardinal DiNardo
President, United States Conference of Catholic Bishops

Dr. Francesco Cesareo
Chairman, National Review Board

Your Eminence and Dr. Cesareo,

The ministry of pastoral care for survivors and the maintenance of safe environments continue to be front and center in dioceses and eparchies. Such endeavors were highlighted during the past summer with the crisis involving Theodore McCarrick and the completion of the Pennsylvania Grand Jury Report. Yes - such revelations especially sixteen years after the Charter are shocking. But as these scandals emerged, victim assistance coordinators and safe environment coordinators were carrying out their roles competently, with compassion and consistency. In dioceses and eparchies, victim assistance coordinators stand ready to listen, to care for, and to accompany survivors and their families.

Working closely with diocesan and eparchial leaders, the Secretariat of Child and Youth Protection consistently offered resources through its Resource Toolbox, presented at both religious and secular conferences, and assisted bishops from around the country to strengthen and improve policies, procedures, and sharing best practices. This annual report illustrates the continued efforts in outreach and prevention. It also points out clearly our near misses and gaps.

The Secretariat of Child and Youth Protection remains committed to assisting bishops in keeping the vulnerable safe from harm, accompanying survivors on their paths to healing, and doing more to defend the human dignity of God's little ones than the reputation of the Church. And while zero-tolerance has been the policy of the Church in the United States since 2002, zero-harm to the vulnerable in the Church's care remains our ultimate goal, now and forever.

Sincerely in Christ,

A handwritten signature in black ink, appearing to read "Bernie", with a long horizontal flourish extending to the right.

Deacon Bernie Nojadera
Executive Director



January 23, 2019

His Eminence Daniel Cardinal DiNardo
President, United States Conference of Catholic Bishops

Dr. Francesco C. Cesareo, PhD
Chairman, National Review Board

His Eminence and Dr. Cesareo,

The 2018 audit period marked the completion of the second year of a three-year audit cycle involving StoneBridge Business Partners. Over the past year, we visited 72 dioceses and eparchies. This marked the eighth consecutive year that StoneBridge Business Partners completed Charter audit procedures on behalf of the Conference. 193 of 197 dioceses and eparchies participated in the audit process this year.

In an on-going effort to produce more efficient and effective audits, this past year we hosted one webinar from the USCCB offices in Washington, DC to educate safe environment coordinators and other diocesan/eparchial representatives on our audit process and approach. This year's webinar along with prior year efforts are available on the USCCB website to assist diocesan/eparchial personnel in their preparation. In July, StoneBridge staff attended a refresher training seminar presentation in conjunction with the Secretariat for Child and Youth Protection (SCYP) at StoneBridge's Rochester, New York headquarters.

Our work is supported by the efforts expended by the diocesan/eparchial personnel who dedicate their working lives to making a difference in maintaining safe environments. We are grateful for their work in implementing and administering the programs and safeguards that are instrumental to this process. None of this would be possible without the support and prioritization from the bishops throughout the country who are fulfilling the promise made in creating this *Charter* in 2002. We appreciate the support and confidence that the Conference has in our organization by trusting us to assist in this worthy cause.

The annual report that follows compiles the information we gathered during our audits and our related findings and comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas F. Englert".

Thomas F. Englert, Consultant
StoneBridge Business Partners



Center for Applied Research in the Apostolate

GEORGETOWN UNIVERSITY • <http://cara.georgetown.edu>

2300 WISCONSIN AVENUE, NW • SUITE 400 • WASHINGTON, DC 20007

February 2019

His Eminence Daniel Cardinal DiNardo, President
United States Conference of Catholic Bishops

Dr. Francesco Cesareo, Chair
National Review Board

Dear Cardinal DiNardo and Dr. Cesareo,

In November 2004, the United States Conference of Catholic Bishops commissioned the Center for Applied Research in the Apostolate (CARA) at Georgetown University to design and conduct an annual survey of all dioceses and eparchies whose bishops and eparchs are members of the USCCB. The purpose of this survey is to collect information on new allegations of sexual abuse of minors and the clergy against whom these allegations were made. The survey also gathers information on the amount of money dioceses and eparchies have expended as a result of allegations as well as the amount they have paid for child protection efforts. The national level aggregate results from this survey for each calendar year are reported in the *Annual Report of the Implementation of the "Charter for the Protection of Children and Young People."*

The questionnaire for the *2018 Annual Survey of Allegations and Costs* was designed by CARA in consultation with the Secretariat of Child and Youth Protection and was only slightly different from the versions used for the 2004 through 2017 *Annual Surveys*. As in previous years, CARA prepared an online version of the survey and provided bishops and eparchs with information about the process for completing it for their diocese or eparchy. In collaboration with the Conference of Major Superiors of Men, major superiors of religious institutes – including brother-only institutes – were also invited to complete a similar survey for their congregations, provinces, or monasteries.

Data collection for 2018 took place between August and January 2019. CARA received responses from all but one of the 196 dioceses and eparchies of the USCCB and 196 of the 230 member religious institutes of CMSM, for response rates of 99 percent and 85 percent, respectively. CARA then prepared the national level summary tables and graphs of the findings for 2018, which are presented in this *Annual Report*.

We are grateful for the cooperation of the bishops, eparchs, and major superiors and their representatives in completing the survey for 2018.

Sincerely,

Thomas Gaunt, S.J.

Fr. Thomas P. Gaunt, SJ
Executive Director

Phone: 202-687-8080 • Fax: 202-687-8083 • E-mail: CARA@georgetown.edu

PLACING SOCIAL SCIENCE RESEARCH AT THE SERVICE OF THE CHURCH IN THE UNITED STATES SINCE 1964

SECTION I

2018



CHAPTER ONE

SECRETARIAT OF CHILD AND YOUTH PROTECTION 2018 PROGRESS REPORT

FROM COMPLACENCY TO URGENCY

Just as the 2018 audit cycle was ending, the Church in the United States was devastated yet again by reports of sexual abuse committed by trusted members of the clergy, including bishops. In June, news broke that Theodore McCarrick had been removed from ministry due to the apparent sexual abuse of a minor. The Pennsylvania Grand Jury Report was released in August, recounting horrific accounts of abuse. Soon after, allegations of sexual abuse and harassment of adults and seminarians also emerged, as did reports that bishops and other Church leaders knew of abuse but did not act. The deep wounds of countless abuse survivors have been re-opened because of this crisis, and today, the entire Church suffers with them.

For many years, the Annual Report issued warnings against a sense of complacency developing in some dioceses. The events of 2018 were the triggers that turned complacency into urgency for many bishops. They served as a springboard for improvements in not only policies and procedures, but also behaviors to support victim/survivors, and to better protect children, youth and adults from abuse.

They also served as a reminder that more than just administrative changes are necessary if we are to create cultures of protection and healing in the Church. The implementation of the guidelines of the *Charter*, as measured by the annual audit, is important. However, what is needed to heal the Church and keep all within its care safe from abuse and other harm is a culture of protection and healing centered on Christ's call to holiness.

Safeguarding does not come about only by carrying out the requirements of the *Charter for the Protection of Children and Young People (Charter)*, but also by remaining dedicated first to the Gospel, and second to the spirit of the *Charter*, especially in their emphases on caring for God's little ones and offering healing and comfort to the suffering.

Many bishops, especially those newly appointed, have been spurred to action. The audit shows their commitments to ensuring multifaceted programs for outreach to victims/survivors are implemented, and that strong child protection policies and procedures are in place. They have also begun to speak in terms of conversion and holiness as solutions to the abuse crisis, rather than just a need for administrative changes.

While it is unfortunate that it took such grave sins and crimes to spur action, as Catholics, we are grateful that God can bring good out of such evils. We encourage any bishops who are hesitant to dedicate enough resources or focus to their mission to protect and heal, to follow the actions of their brother bishops who are now leading the Church's renewal.

BEYOND THE *CHARTER*

The scope of each year's Annual Report is to determine whether a diocese has implemented the *Charter* based on the findings of an external auditor, which is currently StoneBridge Business Partners. Based on this year's audit, overall, while there is

2018 Annual Report: Findings and Recommendations

room for improvement (as noted by StoneBridge's report), dioceses are working to carry out the guidelines of the *Charter*. The findings of the audit show that the *Charter*'s guidelines, designed to protect minors from sexual abuse by clergy, respond to allegations, and support survivors are working, *insofar as they go*.

However, there remains work to be done. During the 2018 audit cycle, there were 26 allegations brought forward by current minors, of which 3 were substantiated by the end of the audit period (more details on the allegations can be found in the auditor's report). Even one instance of abuse is unacceptable and must lead dioceses to recommit themselves to their mission to protect and heal each and every day.

Furthermore, as the recent history of scandals in the Church in the United States has shown, the *Charter* and the audit are limited in their scope and impact. Accountability for abusive bishops and cardinals, as well as those who failed to act upon reports of abuse, are not addressed by the *Charter*.

In the case of McCarrick, for example, it was not the allegation of sexual abuse of a minor in 2017 brought to the attention of the Archdiocese of New York that was handled ineffectively. Instead, questions remain about the way allegations brought forward involving seminarians and adults were handled, especially by bishops in the past. Questions also remain as to how Theodore McCarrick was elevated to the status of a Cardinal, despite these allegations.

Only some of the scandals that have emerged can find their solutions in the *Charter*. Abuse in the Church encompasses more than just the sexual abuse of minors by clergy. Sexual misconduct against adults, seminarians, and other forms of abuse still exist in the Church, and continued efforts must be carried out to confront these evils.

LESSONS LEARNED IN BISHOPS' ACCOUNTABILITY

The abuses of minors and seminarians committed by McCarrick (and reports that Church leaders, including bishops, did not act upon knowledge of the abuse), and the crimes and grave sins described in the Pennsylvania Grand Jury Report are appalling.

Many point to these issues as proof that bishops' accountability has not been adequately addressed within the *Charter*. This is true to an extent. Although bishops hold themselves accountable to the *Charter* in the *Statement of Episcopal Commitment*, penalties and processes for handling allegations against bishops are not specifically contained in the *Charter*. These penalties and processes are under the purview of the Holy See. This omission is the focus of attention for the USCCB.

Nonetheless, bishops have begun addressing some of these issues of abuse in their dioceses. Some have strengthened their diocesan policies to include the use of lay-majority review boards to assess allegations of sexual abuse against bishops. Efforts to better address sexual misconduct committed against adults and seminarians are also moving forward in dioceses. For example, many safe environment offices deal not only with allegations of sexual abuse of minors, but all allegations of misconduct committed by clerics, Church personnel and volunteers. Many dioceses have also conducted reviews of personnel files and archives to ensure offenders have been removed from ministry and to bring about healing and justice for survivors. Finally, bishops have sought to offer healing and accompaniment to parishioners and survivors affected by abuse through dedicated liturgies and listening sessions.

At the national level, work has been directed towards developing new Standards of Accountability to address sexual misconduct by bishops, against adults and minors. National guidelines are also being considered for investigating complaints against bishops, including the creation of a national third-party compliance hotline and a single national lay commission. A proposal is also being developed for a national network relying upon the established diocesan review boards, with their lay expertise, to be overseen by the metropolitan or senior suffragan. Throughout the developments of these responses, the input of the laity has also been considered and incorporated in the work of the USCCB. Before the time of this publication, the USCCB also awaits the fair and timely completion of the various investigations into the situation surrounding Theodore McCarrick and publication of their results.

While all of these changes are much-needed, more must be done to address the situations not addressed by the *Charter*. As the year 2018 marked the seventeenth anniversary of the implementation

of the *Charter*, proof that the *Charter* is still needed, and that additional methods of protection must be developed, remain evident. Much work has been done in dioceses and parishes, but that work is not yet finished, nor will it ever be.

ARTICLES 8-11 OF THE CHARTER

Articles 8 through 11 of the *Charter* ensure the accountability of procedures for implementing the

Charter across the United States, and therefore are not subject to audit. General information regarding the implementation of these articles on a national level can be found below.

ARTICLE 8

Membership of the Committee on the Protection of Children and Young People (CPCYP) from July 1, 2017 to June 30, 2018 included the following bishops shown with the Regions they represented and consultants:

November 2016 – November 2017

Bishop Edward J. Burns, Chair
Term expires in 2017

Bishop Timothy L. Doherty, Chair-Elect
Term expires in 2020

Bishop Peter Uglietto
Term expires November 2017

Bishop Terry R. LaValley (II)
Term expires November 2019

Bishop David A. Zubik (III)
Term expires November 2017

Bishop Barry C. Knestout (IV)
Term expires November 2017

Bishop Joseph R. Kopacz (V)
Term expires November 2019

Bishop Stephen J. Raica (VI)
Term expires November 2018

Bishop Edward K. Braxton (VII)
Term expires November 2018

Bishop Donald J. Kettler (VIII)
Term expires November 2018

Bishop Carl A. Kemme (IX)
Term expires November 2017

November 2017 – November 2018

Bishops

Bishop Timothy L. Doherty, Chair
Term expires in 2020

Bishop Peter Uglietto
Term expires November 2020

Bishop Terry R. LaValley (II)
Term expires November 2019

Bishop Michael J. Fitzgerald (III)
Term expires November 2020

Bishop Barry C. Knestout (IV)
Term expires November 2020

Bishop Joseph R. Kopacz (V)
Term expires November 2019

Bishop Stephen J. Raica (VI)
Term expires November 2018

Bishop Edward K. Braxton (VII)
Term expires November 2018

Bishop Donald J. Kettler (VIII)
Term expires November 2018

Bishop Mark S. Rivituso (IX)
Term expires November 2020

Bishop Patrick J. Zurek (X)
Term expires November 2019

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Bishop Patrick J. Zurek (X)
Term expires November 2019

Bishop Joseph V. Brennan (XI)
Term expires November 2019

Bishop Liam Cary (XII)
Term expires November 2017

Bishop Jorge H. Rodriguez-Novelo (XIII)
Term expires November 2018

Bishop Peter Baldacchino (XIV)
Term expires November 2017

Bishop Jacob Angadiath (XV)
Term expires November 2018

Bishop Joseph V. Brennan (XI)
Term expires November 2019

Bishop Andrew Bellisario, CM (XII)
Term expires November 2020

Bishop Jorge H. Rodriguez-Novelo (XIII)
Term expires November 2018

Bishop William Wack, CSC (XIV)
Term expires November 2020

Bishop Jacob Angadiath (XV)
Term expires November 2018

Consultants

November 2016 – November 2017

Rev. Msgr. Jeffrey Burrill
Associate General Secretary
USCCB

Rev. Brian Terry, SA
President
Conference of Major Superiors of Men

Rev. John Pavlik OFM Cap
Executive Director
Conference of Major Superiors of Men

Rev. Ralph O'Donnell
Executive Director
Secretariat of Clergy, Consecrated Life and
Vocations, USCCB

Ms. Rita Flaherty
Diocesan Assistance Coordinator
Diocese of Pittsburgh

Ms. Beth Heidt-Kozisek, PhD
Director
Child Protection Office
Diocese of Grand Island

November 2017 – November 2018

Rev. Msgr. Jeffrey Burrill
Associate General Secretary
USCCB

Rev. Mark Padrez, O.P.
President
Conference of Major Superiors of Men

Rev. Ralph O'Donnell
Executive Director
Secretariat of Clergy, Consecrated Life and
Vocations, USCCB

Ms. Mary Ellen D'Dintino
Director, Safe Environment Office
Diocese of Manchester

Ms. Mary Jane Doerr
Director, Office of the Protection of Children
and Youth
Archdiocese of Chicago

Ms. Judy Keane
Director of Public Affairs,
USCCB

Ms. Judy Keane
*Director of Public Affairs,
USCCB*

Judge Michael Merz
*Former Chair
National Review Board*

Mr. Jeffrey Hunter Moon
*Director of Legal Affairs
Office of General Counsel, USCCB*

Ms. Siobhan Verbeek
*Director
Canonical Affairs*

Mr. Jeffrey Hunter Moon
*Director of Legal Affairs
Office of General Counsel, USCCB*

Mr. Donald Schmid
*Attorney
Law Offices of Donlad J. Schmid, LLC*

Ms. Siobhan Verbeek
*Director
Canonical Affairs*

The CPCYP meets during the months of March, June, September, and November. At two of those meetings, June and November, the CPCYP meets jointly with the National Review Board (NRB).

NEW BISHOPS' CHARTER ORIENTATION

The CPCYP has been asked to assist all bishops and eparchs, especially those newly appointed, to understand the obligations required of them by the *Charter*. In response, the CPCYP and the NRB typically hosts a program specifically to address any questions new bishops and eparchs may have regarding the *Charter* and the annual compliance audits. Beginning in 2011, this orientation has been an annual event during the bishops' General Meeting in November. It remains a great opportunity to share the history of the *Charter* as well as the spirit behind the original promise to protect and pledge to heal made in 2002.

REVISION OF THE CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE

In June 2018 during the bishops Plenary Assembly, revisions to the *Charter* were passed. The *Charter* revisions include:

- Emphasizing the focus on victims/survivors
- Due regard for the Sacrament of Penance

- Clarification of the audit method and scope
- Clarification regarding Letters of Suitability
- Expanded definition of who needs a Code of Conduct, safe environment training and a background check

The 2018 version of the *Charter* is available on the USCCB website at www.usccb.org/charter.

ARTICLE 9

The *Charter* specifically created the Secretariat of Child and Youth Protection (Secretariat) and assigned to it three central tasks:

- To assist each diocese/eparchy in implementing Safe Environment programs designed to ensure necessary safety and security for all children as they participate in church and religious activities.
- To develop an appropriate compliance audit mechanism to assist the bishops and eparchs in adhering to the responsibilities set forth in the *Charter*.
- To prepare a public, annual report describing the compliance of each diocese/eparchy with the provisions of the *Charter*.

Considering the financial and other differences, as well as the population and demographics, of each diocese/eparchy, the Secretariat is a resource for dioceses/eparchies for implementing safe environment programs and for suggesting training and development of diocesan personnel responsible for child and youth protection programs. The Secretariat also serves as a resource to dioceses/eparchies on all matters of child and youth protection, including outreach to victims/survivors and child protection efforts.

The Secretariat works closely with StoneBridge Business Partners, auditors, to ensure an appropriate audit mechanism to determine the compliance of the responsibilities set forth in the *Charter* are in place.

The Secretariat's support of dioceses/eparchies includes sponsoring web-based communities to assist the missions of Victim Assistance Coordinators, Safe Environment Coordinators, and Diocesan Review Boards; preparing resource materials extracted from the audits; creating materials to assist in both healing and *Charter* compliance; and providing resources for Child Abuse Prevention Month in April. In keeping with the conference emphasis on collaboration, during the month of October, the Secretariat also focuses on the sanctity and dignity of human life as it joins with the Office of Pro-Life Activities in offering prayers and reflections. The issue of child abuse/child sexual abuse is most certainly a life issue in the full spectrum of protecting life from conception to natural death.

When invited, the Secretariat staff will visit dioceses/eparchies and offer assistance. On a limited basis and as needed, the staff of the Secretariat provides support to and referral of victims/survivors to resources that can aid them in their healing. Staff participates in a variety of collaboration with other child serving organizations.

The Secretariat provides staff support for the CPCYP, the NRB, and its committees. The Secretariat provides monthly reports of its activities to the members of the CPCYP and the NRB. These reports reflect the administrative efforts of the Secretariat within the USCCB, the external support by the Secretariat to the dioceses/eparchies on *Charter* related matters, and the work of the CPCYP and NRB as supported and facilitated by the Secretariat.

SECRETARIAT OF CHILD AND YOUTH PROTECTION STAFF

The following four staff members served in the Secretariat during the audit period of July 1, 2017 – June 30, 2018.

Deacon Bernie Nojadera, Executive Director, has been with the Secretariat since 2011. He served as Director of the Office for the Protection of Children and Vulnerable Adults with the Diocese of San Jose, California, from 2002-2011. He was a pastoral associate at St. Mary Parish, Gilroy, California (1987-2002). He was awarded a Bachelor of Arts degree from St. Joseph College, Mountain View, California, in 1984; a master of social work degree specializing in health and mental health services from San Jose State University in 1991; and a master of arts in theology from St. Patrick's Seminary and University, Menlo Park, California, in 2002. He was ordained a permanent deacon in 2008. He has been a member of the Diocese of San Jose Safe Environment Task Force, involved with the San Jose Police Department's Internet Crimes Against Children Task Force, the County of Santa Clara Interfaith Clergy Task Force on the Prevention of Elder Abuse, and the County of Santa Clara Task Force on Suicide Prevention. He has worked as a clinical social worker for Santa Clara County Mental Health (1991-2000) and is a military veteran. He is married and has two adult children.

Melanie Takinen, Associate Director, has been with the Secretariat since August of 2016. From 2011-2016 she served as the Director of Safe Environment Training for the Diocese of Phoenix, where she implemented parish and school site visits to review adherence to diocesan child protection policies and procedures. Other employment includes academic counseling, youth ministry and social services. She holds a Master of Science in Psychology from the University of Phoenix, and a Bachelor of Interdisciplinary Studies with concentrations in Sociology and Education from Arizona State University. She is married and has one child.

Drew Dillingham, Coordinator for Resources and Special Projects, has served the Conference since July 2013. Drew holds a BA in Political Science and a Master's of Public Policy from Stony Brook University, NY. Drew also received a Certificate in Catholic Theology from Saint Joseph's College in Maine and a Diploma in the Safeguarding of Minors

from the Pontifical Gregorian University in Rome, Italy. Drew and his wife, Kimberly, welcomed their first child in 2018.

Laura Garner, Executive Assistant, joined the staff of the Secretariat on January 3, 2011. Previously, Ms. Garner served as a Staff Assistant in the Office of the General Counsel with the USCCB since 2008. Ms. Garner holds a BA in Psychology from Loyola College and an MA in Art Therapy from George Washington University. Before joining the USCCB, she worked at home as a medical transcriptionist while raising four children. Other employment includes bank teller, paraprofessional, computer educator, and receptionist.

ACTIVITIES OF THE SECRETARIAT OF CHILD AND YOUTH PROTECTION

The Secretariat was involved in numerous activities and projects pertaining to healing and prevention over the past year.

- Continued work with the CPCYP and the NRB.
- Collaboration between the Secretariat and dioceses/eparchies regarding all matters of victim/survivor assistance and child and youth protection.
- Planning continued for revisions to the *Charter*, with collaboration from other committees and departments within the USCCB.
- Presentations were prepared and given at various conferences pertaining to healing and child and youth protection within the Church.
- Professional networking relationships were built between the Secretariat and other organizations involved in outreach to victim/survivors and child abuse prevention, including the Conference of Major Superiors of Men, the National Center for Missing and Exploited Children, Boy Scouts of America, the National Children's Advocacy Center, Prevent Child Abuse America, the Healing Voices, Spirit Fire, and the Maria Goretti Network.

CULTURES OF PROTECTION AND HEALING

In collaboration with the CPCYP and the NRB, the Secretariat has developed a training program to assist dioceses in creating cultures of protection and healing. This training program utilizes the principles of High Reliability Organizations (HROs) to assist dioceses in their responses to allegations of abuse and events of harm, as well as to enhance their safe environment programs and prevention strategies. HROs are organizations that operate in situations of high risk for events of harm to occur, yet are able to effectively minimize these risks, and effectively manage an event of harm when it does occur by following certain principles. The initial phase of the HRO training program began in 2017 with seven "alpha site" dioceses who received the initial training (the Dioceses of Manchester, Gary, Kansas City-St. Joseph, Columbus, Baton Rouge, the Eparchy of St. George in Canton, and the Archdiocese of New Orleans). The HRO training program is currently being refined and will later be available to all dioceses as a resource.

ROSARIES FOR HEALING

Beginning in 2017, the Secretariat of Child and Youth Protection (Secretariat) began hosting monthly rosaries for healing of victims/survivors of abuse. The rosaries have been live-streamed via USCCB social media outlets. Dioceses have also been encouraged to host a live-streamed rosary, which is shared through the local diocesan and USCCB social media outlets.

CHILD AND YOUTH PROTECTION CATHOLIC LEADERSHIP CONFERENCE

The thirteenth annual Child and Youth Protection Catholic Leadership Conference (CYPCLC) was held in June 2018 by the Archdiocese of New Orleans. The theme was "15 Years Later: Renewing our Promise to Protect and our Pledge to Heal." Safe Environment Coordinators, Victim Assistance Coordinators, Diocesan Review Board Chairs, and

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other leadership from dioceses across the country attended. Presentations included resources for outreach to victims/survivors and information on improving safe environment programs and child protection. The Secretariat hosted a workshop for new safe environment and victim assistance coordinators.

WEBINARS AND PODCASTS

The Secretariat has been working in consultation with the NRB to host multiple webinars and podcasts throughout the year, which are available on the USCCB.org website. Podcast topics include various national organizations and ministries pertaining to survivor outreach and child and youth protection.

RESOURCE TOOLBOX

Through collaboration with the NRB and with assistance from StoneBridge Business Partners in collecting documents, the Secretariat has maintained a “Resource Toolbox” to assist dioceses/eparchies in *Charter* implementation. The Toolbox contains hundreds of documents gathered from dioceses/eparchies on all articles of the *Charter*. The Toolbox is available to all victim assistance and child and youth protection staff, as well as diocesan/eparchial review board chairs. Additional resources will continue to be accepted into the Toolbox on an ongoing basis.

ARTICLE 10

The United States Conference of Catholic Bishops established the NRB during their meeting in June of 2002. The functions of the Board were modified slightly and reconfirmed in June of 2005 when the *Charter* was revised. The purpose of the NRB is to collaborate with the USCCB in preventing the sexual abuse of minors by persons in the service of the Church in the United States.

The membership of the NRB during the audit period was as follows:

Term expires in 2021
Ms. Amanda Callanan
Ms. Suzanne Healy

Dr. Christopher McManus
Ms. Eileen Puglisi

Term expires in June 2020

Dr. Francesco Cesareo, Chair
Adm. Garry Hall (ret.)
Mr. Ernie Stark

Term expires in 2019

Mr. Howard Healy
Ms. D. Jean Ortega-Piron
Mr. Donald Wheeler

Term expires in 2018

Judge M. Katherine Huffman
Ms. Nelle Moriarty
Mr. Donald Schmid

The chair is appointed by the USCCB President from persons nominated by the NRB. In 2016 Archbishop Kurtz re-appointed Dr. Francesco Cesareo to be chair for a second four-year term expiring in June 2020. The other officers are elected by the Board, and committee chairs are appointed by the NRB chair.

The NRB officers and committees were as follows:

Chair: Dr. Francesco Cesareo
Vice Chair: Mr. Don Wheeler
Secretary: Ms. Kate Huffman

Its four committees are:

The Audit Committee, chaired by Mr. Don Wheeler, continued its work of keeping the audit process updated and effective, as well as obtaining documents for the Resource Toolbox.

The Research and Trends Committee, chaired by Ms. D. Jean Ortega-Piron, moved forward in discussing current trends in child and youth protection as well as beginning discussions on what is needed for a future research study.

The Communications Committee, chaired by Ms. Nelle Moriarty, is developing ways to assist dioceses/eparchies in getting out to the faithful the progress the church has made in combating child sexual abuse.

The Nominations Committee chaired by Mr. Howard Healy, elicited nominations of potential NRB candidates for terms beginning in June of 2018.

Additional information concerning the NRB can be found at: <http://www.usccb.org/about/child-and-youth-protection/the-national-review-board.cfm>

ARTICLE II

President of the United States Conference of Catholic Bishops, Archbishop Daniel Cardinal DiNardo, has shared a copy of this Annual Report with the Holy See.

CONCLUSION

THE CHURCH AS A LOVING MOTHER

The Church would not be where it is today regarding survivor/victim outreach and child and youth protection without the courage of victims/survivors of sexual abuse who continue to come forward to share their stories. We must be ever grateful to them for the role they continue to play in bringing healing and accountability to the Church. Our efforts must be toward their healing and the prevention of future abuse.

Policies and protocols are important but what is needed now more than ever in the Church today is a return to holiness and a culture that puts Christ and his “little ones” at the center. Within the Church’s mission to save souls, also resides the duty to protect those in Her care, and to offer healing and comfort to those who have been abused in any way. The Church “must be like a loving mother who loves all her children but cares for all and protects with a special affection those who are smallest and defenseless.”

We must always endeavor to improve and move forward. Creating a culture of protection and healing throughout the Church remains at the forefront of work of the CPCYP, the NRB, and the Secretariat. It is our hope that our efforts to strengthen this culture will help the Church to offer effective outreach and support to victims/survivors, uphold a policy of “zero-tolerance” for abuse and to prevent any type of abuse.

God creates every person with an inherent human dignity, and it is up to each one of us to ensure that all people are treated with the respect they deserve as children of God. As we carry out the work of serving victims/survivors and creating safe environments, we join in the mission of the Gospel by working together to create cultures of protection and healing. May the Holy Spirit guide our efforts.

CHAPTER TWO

STONEBRIDGE BUSINESS PARTNERS 2018 AUDIT REPORT

INTRODUCTION

This Audit Report summarizes the results of the 2018 *Charter* audits for inclusion in the Secretariat of Child and Youth Protection's Annual Report, in accordance with Article 9 of the *Charter for the Protection of Children and Young People*. Article 9 states, "The Secretariat is to produce an annual public report on the progress made in implementing and maintaining the standards in this *Charter*. The report is to be based on an annual audit process whose method, scope, and cost are approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. This public report is to include the names of those dioceses/eparchies which the audit shows are not in compliance with the provisions and expectations of the *Charter*."

The 2018 *Charter* audits represent the second year of the 2017-2019 audit cycle. StoneBridge Business Partners (StoneBridge) was contracted to audit the 197 Catholic dioceses and eparchies in the United States on behalf of the United States Conference of Catholic Bishops (USCCB), the USCCB Committee on the Protection of Children and Young People, and the National Review Board.

StoneBridge Business Partners is a specialty consulting firm headquartered in Rochester, New York, which provides forensic, internal, and compliance auditing services to leading organizations nationwide. The substantive auditing processes utilized by StoneBridge are tailored to the specific objectives of each engagement. For the USCCB, StoneBridge worked with the Secretariat of Child and Youth Protection (SCYP) to develop a comprehensive audit instrument, revise the charts used to collect

data, and train StoneBridge staff and diocesan/eparchial personnel on the content, expectations and requirements of the *Charter* audits.

During 2018, StoneBridge visited 72 dioceses and eparchies ("on-site audits"), and collected data ("data collection audits") from 122 others. Of the 72 dioceses/eparchies that received on-site audits during 2018, one diocese was found non-compliant with certain aspects of the *Charter*. To be found compliant with the data collection audit, the 125 dioceses/eparchies only needed to submit Charts A/B and C/D. Therefore, all of the dioceses and eparchies participating in the data collection audits were found compliant with the audit requirements. Three eparchies did not participate in either type of audit.

For on-site audits, compliance with the *Charter* was determined based on implementation efforts during the period of July 1, 2017 through June 30, 2018. The audit included Articles 1 through 7, and 12 through 17. Articles 8, 9, 10, and 11 are not the subject of these audits, but information on each of these Articles can be found in Section One of the Annual Report.

INSTANCES OF NON-COMPLIANCE AND NON-PARTICIPATION

Due to a lack of openness and transparency regarding the communication of allegations to affected communities, the Diocese of Lincoln was found non-compliant with Article 7 for the 2018 audit period.

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StoneBridge will be following up with the diocese at the close of the 2019 audit period to inquire about the progress made on rectifying this issue.

The Eparchy of St. Mary Queen of Peace, Eparchy of St. Peter the Apostle and the Eparchy of Phoenix did not participate in either the on-site or data collection process in 2018, so no information on these locations could be included in this report.

COMMENTS ON THE AUDIT ENVIRONMENT

There were a number of unusual and infrequent events that occurred during the calendar year 2018. While these events did not impact the audit period of July 1, 2017 to June 30, 2018, the events were noteworthy for their scope and presence while the audit work was ongoing.

In June of 2018, the US Conference of Catholic Bishops revised the *Charter for the Protection of Children and Young People*. While this process did not have an immediate impact on the work of the auditors, it did lead to discussion regarding the impact of the changes while we performed our on-site visits from July to December 2018. One particular issue reported in the media was that the *Charter* did not apply to the Bishops themselves. As originally stated and restated in the Bishops Statement of Episcopal Commitment we quote, **“We will apply the requirements of the *Charter* also to ourselves.”** It has been our position since our initial report in 2011 that the *Charter* indeed applies to Bishops.

Several significant subsequent events impacted the performance of the audit procedures for the period ending June 30, 2018. The Pennsylvania Grand Jury Report on six Dioceses in Pennsylvania was released and allegations of abuse regarding former Cardinal McCarrick were announced. These two events triggered a number of investigations by federal and state governmental authorities in various dioceses and eparchies across the United States. In some cases our work needed to be delayed in order to accommodate the timing of these investigations. In addition, on-going diocesan/eparchial efforts demonstrated a focus and urgency that StoneBridge had not previously observed in prior years.

The November 2018 Bishop's Plenary Assembly agenda was primarily devoted to addressing a response to the events of 2018. While the response

of the US Conference was slowed by a request from the Vatican, we have observed individual dioceses/eparchies actively reviewing priest files and in some cases releasing or updating lists of alleged abusers. In addition, we have observed an increased emphasis on discussion and transparency with parishioners regarding both current events and safe environment work the church has been performing. While we applaud these efforts, we are concerned the effort is one of response to an outside influence rather than a proactive measure from within. We encourage individual Bishops to continue discerning what is an appropriate path for the Conference to pursue regarding *Charter* issues and other forms of abuse within the clergy. Regardless of differing ideologies, the collective body of Bishops must provide leadership to the thousands of employees and volunteers who implement the decisions of individual Bishops on a daily basis in their parishes.

As we discuss *Charter* issues with Bishops, it is apparent that the complexities of the abuse issues are both overwhelming and difficult for one individual to form an effective response to. We encourage Bishops to engage their review boards, outside legal professionals, and others in the laity with expertise in the areas of abuse to assist in the development of an effective response.

COMMENTS ON SELECTIVE AUDIT TOPICS

We have noted in past years that there are varying degrees of resources available within the dioceses/eparchies we visit. If dioceses/eparchies with fewer resources could access dioceses/eparchies with more resources, we believe that *Charter* implementation efforts would be enhanced across the Conference. It is our observation that when resources of dioceses and eparchies are shared, a stronger and more vibrant effort in implementing the *Charter* is often the result. As an example, the California Conference has monthly conference calls for the Safe Environment Coordinators, Victims Assistance Coordinators, and other staff members. This collaboration has led to a sharing of what is effective in *Charter* implementation. We believe other regions of the United States should consider a collaborative approach.

As described further in the Audit Process section of the report, StoneBridge issues two letters at the end of an on-site audit; a compliance letter and a management letter. The receipt of a management letter is optional unless a comment is considered an issue that could potentially affect the compliance of the diocese or eparchy in the future. The letter states that these issues must be resolved or compliance could be compromised at their next on-site audit. StoneBridge then follows up with these dioceses and eparchies at the end of the following audit year to see what progress they have made with the recommendations.

- Approximately 14% of the dioceses/eparchies we visited during the current audit period will require follow-up at the end of the 2018/2019 audit period. StoneBridge does this to ensure that procedures have been strengthened in order to avoid a potential state of non-compliance with the *Charter*.
- For the on-site audits requiring follow-up from the 2016/2017 audit period, StoneBridge noted one location that had not made any improvements in the recommendations that were made. StoneBridge will follow-up with this location again at the end of the 2018/2019 audit period.

Of the 122 data collection audits completed for the 2018 audit year, StoneBridge issued two memos which highlight potential issues with the diocese's compliance related to children's training.

There are a number of steps that Dioceses and Eparchies have taken which go beyond the specific requirements of the *Charter*. Based on our on-site visits and data collection work for the audit period ending June 30, 2018 here are some statistics regarding selected topics:

- Over 95% of on-site visits requested an optional management letter from the auditors during the period. These letters provide suggestions for consideration to the Bishop for their consideration while implementing *Charter* procedures within their Diocese/Eparchy.
- Approximately 54% of dioceses/eparchies indicated that they perform parish audits in some form on a regular or "as needed" basis. It is our observation that Chancery offices who maintain regular face-to-face contact with parishes have

better results in implementing training and background check procedures than those who do not. StoneBridge continues to suggest to dioceses/eparchies that they consider the feasibility of implementing a formal process to periodically visit parish and school locations in order to review documentation and assess compliance with safe environment requirements. These visits would allow the diocese/eparchy to gain a better understanding of how policies and procedures are being implemented at the parish and school level and assist in ensuring compliance with safe environment requirements. We believe the key element in this process is the development of a personal relationship of staff between the two locations.

- Over 78% of dioceses/eparchies indicated that they require some type of adult refresher training. Although not required by the *Charter*, StoneBridge continues to suggest to dioceses/eparchies that they consider implementing a policy for renewing safe environment training for all clergy, employees, and volunteers on a periodic basis (suggested every 5 to 7 years). The refresher training is a good way to ensure that everyone is aware of the importance of the program and will provide them with any new information regarding the protection of children and young people that may have developed from the last time they received training.
- Approximately 88% of dioceses/eparchies indicated that they require background check renewals. Although not required by the *Charter*, StoneBridge continues to suggest to dioceses/eparchies that they consider renewing background checks periodically (suggested every 5 to 7 years). Renewing background checks would ensure that the diocese/eparchy has the most up to date information on those working with children and youth.
- Of the 72 locations visited this audit period, twenty-eight dioceses elected to have Stonebridge conduct parish/school audits. A total of 108 parishes/schools were visited. Although this is optional, StoneBridge continues to encourage dioceses/eparchies to include these in their visits, especially if they do not currently conduct their own audits. Please refer to *Appendix III* for a list of dioceses that requested

parish audits during their scheduled on-site audit by StoneBridge auditors in 2018.

- In an effort to offer more comprehensive information to dioceses and eparchies about *Charter* knowledge and implementation efforts at the parish and school level, StoneBridge offered a web-based audit survey to all dioceses/eparchies. The survey was not a required part of the audit, but simply an optional tool for dioceses and eparchies to distribute to parish/school locations. The survey is made available to those participating in both data collection and on-site audits each year. Therefore, some dioceses may elect to use it more than once. Since initially offering this survey in the 2013/2014 audit period, it has been used a total of 69 times.

While not specifically required by the *Charter*, we believe these activities provide for a stronger Safe Environment than without. We encourage the continuation of these activities and will continue to suggest these activities where appropriate.

OTHER AUDIT FINDINGS AND COMMENTS

Section I below details the topics discovered during the on-site audits that StoneBridge believes could have an impact on a diocese's/eparchy's ability to fully implement the *Charter*.

Section II details the suggestions StoneBridge made to dioceses/eparchies to help improve the current policies, procedures, and programs related to the *Charter*.

SECTION I

Policies and Procedures

- 4% of dioceses/eparchies visited do not have reporting procedures available in printed form in all principal languages in which the liturgy is offered. This potentially limits the ability of non-English speaking populations to report instances of abuse.

Screening and Training Issues

- StoneBridge noted 4% of dioceses/eparchies where background checks were not being completed in a timely manner and/or poor record-keeping of the background check database, which can lead to individuals going unscreened.
- StoneBridge observed 4% of dioceses and eparchies where some clergy, employees, and volunteers were not trained or background checked, but have contact with children. It is important that dioceses/eparchies are effectively monitoring parishes and schools to ensure those working with children have the proper training and background checks.
- Approximately 6% of dioceses/eparchies report a high percentage of children as untrained. The majority of the gaps are related to training in the parish religious education classes. For various reasons, dioceses/eparchies reported difficulties in getting parishes to cooperate. It is the responsibility of the diocese/eparchy to work with parishes to ensure the training program for children/youth is working effectively.

Monitoring Issues

- During our on-site audits, diocesan/eparchial safe environment personnel expressed difficulties in getting parishes and schools to respond to their requests. This affects the ability to effectively monitor compliance with the safe environment program requirements to ensure the safety of children and youth in the diocese/eparchy. This occurred in approximately 7% of the Dioceses visited during the current year. In these instances, StoneBridge recommended greater involvement and program support by the diocesan/eparchial leadership.
- As part of the audit process, StoneBridge requested dioceses/eparchies to provide a list of employees and volunteers from select parishes/schools to demonstrate that the locations can support the training and background check figures being reported to the dioceses/eparchy. For approximately 8% of locations visited

during the current audit year, this proved to be a difficult task as parishes and schools were not required to submit any type of roster with their annual reporting to the diocese. The diocese/eparchy cannot effectively monitor compliance without at least being able to verify the number of people being reported from parishes/schools each year.

- StoneBridge noted that 3% of dioceses/eparchies have clergy who have been removed from ministry, but there is no formal plan in place to monitor their whereabouts or activities. StoneBridge suggested that dioceses/eparchies collaborate internally and externally with other dioceses to create a program to formally monitor the whereabouts of clergy on prayer and penance.
- The auditors observed a significant increase in the number of dioceses reviewing clergy personnel files to ensure any past *Charter*-related issues were handled appropriately. Many of these reviews were started after the events unfolded in the fall of 2018. StoneBridge observed 24% of dioceses/eparchies who had not started a file review, or had not done one in quite some time. We suggested that these locations consider this type of review.

SECTION II

Monitoring Issues

- Although renewal training and background checks are not required by the *Charter*, we noted approximately 15% of Dioceses/eparchies that were not effectively monitoring compliance with their own internal policy requirements for renewal training and background checks. Dioceses/eparchies not using a centralized database rely significantly on parishes and schools to ensure compliance with safe environment requirements. In these cases, the ability to verify compliance at the local level is limited unless those dioceses/eparchies conduct parish/school audits on a regular basis.

Policies and Procedures

- StoneBridge continued to make suggestions to approximately 30% of the dioceses/eparchies visited this year regarding policies and procedures that failed to consider the 2011 *Charter* updates.
- StoneBridge observed approximately 18% of dioceses/eparchies whose policies were missing one or more aspects required by Article 5 of the *Charter*. These include the treatment of the accused, encouraging the accused to retain counsel, restoring an accused's good name, presumption of innocence during an investigation, and affirmation that clergy who are credibly accused will be permanently removed from ministry. While the auditors were able to confirm that these are the practices of the dioceses/eparchies, we suggested that they include specific language in their policy to ensure it is clear what the policies are with regard to these topics.
- 21% of dioceses/eparchies did not have a policy in place regarding the relocation of clergy who have committed an act of sexual abuse. Although the auditors confirmed the practice of the diocese/eparchy was in line with *Charter* requirements, we suggested that these locations update their policy to include specific language on this topic.
- Article 12 requires dioceses/eparchies to maintain a "safe environment" program which the diocesan/eparchial Bishop deems to be in accord with Catholic moral principles. This is typically done through a promulgation letter. As part of the audit process, StoneBridge requested to see a copy of the most recent promulgation letter from the Bishop. In 10% of dioceses/eparchies visited, the auditors observed outdated letters that were not all inclusive of programs being used by parishes and schools. Another 10% were using letters from a previous Bishop. StoneBridge suggested that dioceses/eparchies review the safe environment programs currently being used and issue updated letters as needed.
- 8% of dioceses/eparchies were not tracking absences for children's training, ultimately

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reporting all children as trained on Chart C/D. We suggested that these locations start requiring parishes and schools to track attendance to ensure that the children's training is being appropriately tracked each year.

- StoneBridge observed that 10% of dioceses/eparchies are not requiring pastors to certify that they have received and implemented the safe environment curriculum at their parish. As suggested in Bishop Aymond's 2006 memo to the bishops, the diocese/eparchy should require documentation from each pastor that the parish has received the required safe environment program curricula and materials and has implemented them. StoneBridge suggested to dioceses/eparchies that they consider implementing some type of annual certification from pastors to assist in the monitoring of overall compliance with safe environment requirements.
- The auditors observed 6% of dioceses that required adults to complete safe environment training and submit to a background check only if they had "substantial contact" with minors. We suggested that these locations consider broadening their existing policy to require training and background checks for everyone whose duties include contact with minors.
- 4% of dioceses/eparchies allowed individuals a grace period of 30-90 days to complete the safe environment training. During this time, they were allowed to begin their ministry with the diocese. We suggested that these locations consider shortening the grace period or mandating that both the background check and training be completed prior to working with children.
- In addition to reviewing allegations of clergy sexual abuse of minors, diocesan/eparchial review boards should also be periodically reviewing their *Charter*-related policies and procedures. StoneBridge noted approximately 5% of review boards that have not reviewed the policies and procedures. Dioceses and eparchies are encouraged to use the resources and talents of their review board members to ensure that *Charter* related policies and procedures are relevant.
- Based on visits to the parishes/schools and discussions with diocesan/eparchial personnel, the auditors found that information on how to make a report of sexual abuse wasn't consistently displayed at the parishes or schools of approximately 10% of the locations visited. Some parishes/schools publish the information in weekly bulletins, others display it in prominent locations. Dioceses/eparchies need to reinforce the importance of posting this information at the parishes/schools to ensure that everyone has access to the information should they need to use it.
- The auditors observed that approximately 6% of dioceses/eparchies were not requiring individuals to sign off on the Code of Conduct. It is important to ensure that individuals have read the Code and understand what is expected of them in their employment/ministry with the diocese/eparchy.
- With respect to policies regarding communications, the auditors typically observe that dioceses have a policy detailing the processes for responding to media inquiries, procedures that should be considered in the event that an allegation occurs, and who can speak on behalf of the diocese if the media is seeking comments. For the current audit period, StoneBridge observed 14% of dioceses/eparchies who did not have a formal communication's policy, or one that had not been updated in some time.

AUDIT PROCESS

The following paragraphs detail the audit process, including a description of what is to be expected of dioceses/eparchies with regard to audit documents, audit preparation, on-site visits, and the completion of the audit.

Prior to the start of the audit year, StoneBridge and the SCYP hosted one webinar from the USCCB offices in Washington, DC to educate safe environment coordinators and other diocesan/eparchial representatives on our audit process and approach.

Whether participating in an on-site audit or a data collection audit, each diocese and eparchy is required to complete two documents; Chart A/B

and Chart C/D. These Charts were developed by StoneBridge and the SCYP, and are used to collect the information necessary from each diocese for inclusion in the Annual Report.

Chart A/B summarizes allegations of sexual abuse of a minor by a cleric as reported to a specific diocese during the audit year. Chart A/B contains information such as the number of allegations, the date the alleged abuse was reported, the approximate dates the alleged abuse occurred, the nature of the allegations including whether the victim is a current minor, the outcome of any investigations, if the allegation was reported to the diocesan review board and the status of the accused cleric as of the end of the audit period. Chart A/B also reports the number of abuse survivors and/or family members served by outreach during the audit period. Information from Chart A/B is used to compile statistics related to Charter Articles 1, 2, 4 and 5.

Chart C/D summarizes the compliance statistics related to Articles 12 and 13, such as:

- total children enrolled in Catholic schools and parish religious education programs
- total priests, deacons, candidates for ordination, employees, and volunteers ministering in the diocese or eparchy
- total number of individuals in each category that have received safe environment training and background evaluations
- programs used for training each category
- agencies used for background evaluations
- frequency of training and background evaluations
- method used for collecting the data from parishes and schools

Statistics from Charts A/B and C/D are presented in *Appendix I*.

During a data collection audit, StoneBridge reviewed both Charts A/B and C/D for completeness and clarified any ambiguities. Afterward, the Charts were forwarded to the SCYP as proof of the diocese/eparchy's participation.

In addition to Charts A/B and C/D, on-site audit participants are required to complete the Audit Instrument, which asks a diocese or eparchy to explain how they are compliant with each aspect of the *Charter*, by Article. During the audit, StoneBridge verified Audit Instrument responses

through interviews with diocesan/eparchial personnel and review of supporting documentation.

StoneBridge staff employ various interview techniques during the performance of these audits. The interview style tends to be more relaxed and conversational, versus interrogative. The intent is to learn about an interviewee's role(s) at the diocese or eparchy, specifically as his or her role(s) relate to *Charter* implementation. In addition, auditors may interview survivors of abuse and accused clerics, if any are willing. The objective of these interviews is to ensure that both survivors and the accused are being treated in accordance with guidelines established in the *Charter*.

Parish audits are an optional, but nonetheless important part of the audit methodology. During parish audits, StoneBridge auditors, often accompanied by diocesan/eparchial personnel, visit random diocesan/eparchial parishes and schools to assess the effectiveness of the *Charter* implementation program. StoneBridge staff review database records and a selection of physical files maintained at the parish or school to determine whether employees and volunteers are appropriately trained and background checked. The auditors interview parish/school personnel, and visually inspect posted information on how or where to report an allegation of abuse, such as victim/survivor assistance posters in vestibules, or contact information in weekly bulletins. The auditors also inquire as to the parishes' policies involving visiting priests.

Again this year, in an effort to offer more comprehensive information to dioceses and eparchies about *Charter* knowledge and implementation efforts at the parish and school level, StoneBridge offered a web-based audit survey to dioceses/eparchies. The survey was not a required part of the audit, but simply an optional assessment tool for dioceses and eparchies to distribute to parish/school locations. The survey consisted of 29 *Charter* related questions, such as "How would you rate the level of comprehension of safe environment related policies and procedures among staff, volunteers, and parishioners?" and "Are copies of the code of conduct and/or diocesan/eparchial standards of ministerial behavior made available to clergy and other personnel/volunteers of the parish?" The electronic surveys were to be completed by someone at each parish/school who

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has some responsibility for the implementation of the *Charter* at that location. Survey results were transmitted electronically back to StoneBridge. Prior to arriving on-site, auditors reviewed and summarized the results of the survey, and shared these with diocesan/eparchial personnel.

At the completion of each on-site audit, the auditors prepare two letters. The first letter is called the Compliance Letter. This letter communicates to bishops and eparchies whether their dioceses/eparchies are found to be in compliance with the *Charter*. The Compliance Letter is brief, and states that the determination of compliance was “based upon our inquiry, observation and the review of specifically requested documentation furnished to StoneBridge Business Partners during the course of our audit.” Any specific instances of noncompliance, if applicable, would be identified in this communication and expanded upon accordingly.

The second letter, called the Management Letter, communicates to the bishop or eparch any suggestions that the auditors wish to make based on their findings during the on-site audit. Any comments made in these letters, as each Management Letter states, “do not affect compliance with the *Charter for the Protection of Children and Young People*, they are simply suggestions for consideration.” The receipt of a management letter is optional unless a comment is considered to be something that could potentially affect the compliance of the diocese or eparchy in the future, then a written management letter is mandatory. In this situation, the comments are separated in the letter from the other ones that are simply suggestions. The letter states that these issues must be resolved or it could affect compliance at their next on-site audit. As part of the audit process, StoneBridge follows up with these dioceses and eparchies at the end of the following audit year to see what progress they have made with the recommendations.

In any case, suggestions for improvements are delivered verbally during the on-site audit. A list of all the dioceses and eparchies that received on-site audits during 2018 can be found in *Appendix II* of this report.

At the completion of each data collection audit, a bishop or eparch will receive a data collection compliance letter. The letter states whether or not a diocese or eparchy is “in compliance with the data collection requirements for the 2017/2018

Charter audit period.” Receipt of this letter does not imply that a diocese or eparchy is compliant with the *Charter*. Compliance with the *Charter* can only be effectively determined by participation in an on-site audit.

A diocese/eparchy may also receive a data collection memo with their compliance letter. These memos do not affect the compliance of the dioceses/eparchy. They are issued for situations that could potentially cause compliance issues in the future, during the next on-site audit.

A description of each Article and the procedures performed to determine compliance are detailed below:

ARTICLE 1

Article 1 states, “Dioceses/eparchies are to reach out to victims/survivors and their families and demonstrate a sincere commitment to their spiritual and emotional well-being. This outreach may include counseling, spiritual assistance, support groups, and other social services agreed upon by the victim and the diocese/eparchy.” The most common form of outreach provided is payment or reimbursement for professional therapy services. Some dioceses/eparchies will offer other forms of financial support on a case-by-case basis.

When the victim/survivor comes forward him or herself, or with the assistance of a friend or relative, dioceses and eparchies are able to freely communicate with the survivor about available support services and assistance programs. When a survivor comes forward through an attorney, by way of a civil or bankruptcy claim, or the diocese/eparchy is made aware of an allegation as part of an ongoing investigation by law enforcement, dioceses and eparchies may be prevented from providing outreach directly to the survivor. In some cases, however, we find that dioceses and eparchies have attempted to fulfill their *Charter* obligation under Article 1 by communicating information about available support services and assistance programs to the agents of the survivors.

To assess compliance with Article 1, StoneBridge reviewed documentation to support efforts made during the current audit period to offer outreach to victims.

ARTICLE 2

Article 2 has multiple compliance components related to a diocese/eparchy's response to allegations of sexual abuse of minors. First, Article 2 requires that policies and procedures exist for prompt responses to allegations of sexual abuse of minors. StoneBridge reviewed these policies for completeness, including updates to policies for *Charter* revisions. In the most recent *Charter* update of 2011, the definition of "sexual abuse" was updated to include "the acquisition, possession, or distribution of child pornography by a cleric."

Second, Article 2 requires dioceses and eparchies to "have a competent person or persons to coordinate assistance for the immediate pastoral care of persons who report having been sexually abused as minors by clergy or other church personnel." Most dioceses and eparchies fulfill this requirement by appointing a Victim Assistance Coordinator ("VAC"). Survivors are directed to contact this individual to make reports about child sexual abuse by clergy. Sometimes the contact person is not the VAC, but a different individual working in the pastoral center, even a member of clergy (discussed earlier).

Article 2 also states that "procedures for those making a complaint are to be available in all principal languages in which the liturgy is celebrated in the diocese/eparchy and be the subject of public announcements at least annually." Dioceses and eparchies comply with this component by publishing versions of policies and procedures in multiple languages on their website. The existence of these procedures is typically made known to the public by an announcement in the diocesan/eparchial paper or newsletter, and some form of publication at the parish level.

The fourth component of compliance with Article 2 concerns the review board. The *Charter* requires every diocese and eparchy to have an independent review board "to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and his determination of a cleric's suitability for ministry." In addition, the review board is charged with regularly reviewing policies and procedures for responding to allegations. A diocese's or eparchy's compliance with this component of Article 2 is determined by interviews with review board members, and the review of redacted

meeting minutes and agendas from review board meetings that took place during the audit period.

ARTICLE 3

Article 3 prohibits dioceses and eparchies from requesting confidentiality as part of their settlements with survivors. Confidentiality is only allowed if requested by the survivor, and must be noted so in the text of the agreement. As evidence of compliance with this Article, dioceses and eparchies provided auditors with redacted copies of complete settlement agreements for review.

ARTICLE 4

Article 4 requires dioceses and eparchies to report an allegation of sexual abuse of a minor to the public authorities and cooperate with their investigation. Additionally, dioceses/eparchies are to advise victims of their right to make a report to public authorities in every instance. Compliance with Article 4 is determined by a review of related policies and procedures, correspondence with local authorities regarding new allegations, and interviews with diocesan/eparchial personnel responsible for making the reports. In some instances, auditors reach out to the applicable public authorities and confirm diocesan cooperation.

Article 4 also covers the reporting protocol for an allegation of abuse against an individual who habitually lacks the use of reason. The *Charter* was updated in 2011 to include in the definition of a "minor" any adult who "habitually lacks the use of reason." During the review of policies and procedures, auditors attempted to locate specific language regarding this matter in relevant diocesan and eparchial policies.

ARTICLE 5

Article 5 of the *Charter* has two components: removal of credibly accused clerics in accordance with canon law, and the fair treatment of all clerics against whom allegations have been made, whether the allegations are deemed credible or not. Accused clerics should be accorded the same rights as victims during an investigation of an allegation.

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They should be offered civil and canonical counsel, accorded the presumption of innocence, and given the opportunity to receive professional therapy services.

Compliance with Article 5 is determined by a review of policies and procedures, review of relevant documentation (such as decrees of dismissal from the clerical state, decrees mandating a life of prayer and penance, prohibitions concerning the exercise of public ministry, etc.), and interviews with diocesan/eparchial personnel.

ARTICLE 6

Article 6 is concerned with establishing and communicating appropriate behavioral guidelines for individuals ministering to minors. Compliance with Article 6 is determined by a review of a diocese/eparchy's Code of Conduct, related policies and procedures, and through interviews with diocesan/eparchial personnel.

ARTICLE 7

Article 7 requires dioceses/eparchies to be open and transparent with their communications to the public regarding allegations of sexual abuse of minors by clergy, especially those parishes that may have been affected. The *Charter* does not address the timeliness of such communication, so for the purposes of our audit, a diocese or eparchy was considered compliant if the diocese could demonstrate that at the very least, a cleric's removal is formally announced to the affected parish community.

ARTICLE 8-11

Refer to Chapter One for information regarding these articles, as they are not subject to the audit.

ARTICLE 12

Article 12 of the *Charter* calls for the education of children and those who minister to children about ways to create and maintain a safe environment for children and young people. For a diocese or eparchy to be considered compliant with Article 12, the bishop and his staff must be able to demonstrate that training programs exist, the bishop approves

the programs, and the appropriate individuals have participated in the training.

During the audits, StoneBridge reviewed training program materials, letters of promulgation regarding the programs, and a database or other record-keeping method by which a diocese/eparchy tracks whether or not individuals have been trained.

ARTICLE 13

Article 13 of the *Charter* requires dioceses and eparchies to evaluate the background of clergy, candidates for ordination, educators, employees, and volunteers who minister to children and young people. Specifically, they are to utilize resources of law enforcement and other community agencies. To assess compliance, StoneBridge reviewed the background check policy and a database or other record-keeping method by which a diocese/eparchy tracks the background check clearances.

Article 13 also addresses the policies and procedures in place for obtaining necessary suitability information about priests or deacons who are visiting from other dioceses or religious orders. To determine compliance, StoneBridge requested copies of letters of suitability received during the period, and inquired as to the diocese/eparchy's retention policy for those letters.

ARTICLE 14

Article 14 governs the relocation of accused clerics between dioceses. Before clerics who have been accused of sexual abuse of a minor can relocate for residence, the cleric's home bishop must communicate suitability status to the receiving bishop. To assess compliance with Article 14, auditors reviewed diocesan/eparchial policies to understand the procedures for receiving transferred and visiting priests and deacons. StoneBridge also inquired of the appropriate personnel to confirm that practice was consistent with the policy.

ARTICLE 15

Article 15 has two components, only one of which is subject to our audit. That requirement is for bishops to have periodic meetings with the Major Superiors

of Men whose clerics are serving within a diocese or eparchy. The purpose of these meetings is to determine each party's role and responsibilities in the event that an allegation of sexual abuse of a minor is brought against a religious order cleric. To assess compliance with Article 15, auditors reviewed copies of calendar appointments, letters documenting the meetings, and discussions with Bishops and delegates who were involved in the meetings.

ARTICLE 16

Article 16 requires dioceses and eparchies to cooperate with other organizations, especially within their communities, to conduct research in the area of child sexual abuse. At minimum, dioceses and eparchies should participate in the annual Center for Applied Research in the Apostolate (CARA), the results of which are included in the SCYP's Annual Report.

Auditors inquired of dioceses and eparchies as to what other churches and ecclesial communities, religious bodies, or institutions of learning they have worked with in the area of child abuse prevention.

ARTICLE 17

Article 17 covers formation of clergy, from seminary to retirement. Compliance with this Article is assessed by interviewing diocesan/eparchial personnel responsible for formation of clergy and candidates for ordination, and by review of supporting documentation such as registration forms for clergy seminars, textbooks used for the formation of candidates for the permanent diaconate, and brochures describing priestly retreats.

DEFINITIONS

The definitions presented below refer to select terms used in this report.

- "Bishop" refers to the head of any diocese or eparchy, and is meant to include bishops, eparchs, and apostolic administrators.
- "Candidates for ordination" refers to all men in formation, including seminarians and those preparing for the permanent diaconate.
- "Canon Law" refers to the body and laws of regulations made by or adopted by ecclesiastical authority for the government of the Christian organization and its members.
- "Children and youth" includes all students enrolled in diocesan/eparchial schools and religious education classes.
- "Clergy" is defined as the body of all people ordained for religious duties. In the context of the Charter, clergy includes priests and deacons.
- "Deacons" includes religious order or diocesan deacons in active or supply ministry in a diocese/eparchy (including retired deacons who continue to celebrate occasional sacraments).
- "Educators" includes paid teachers, principals, and administrators in diocesan/eparchial and parish schools.
- "Employees" refers to paid persons (other than priests/deacons or educators) who are employed by and work directly for the diocese/eparchy or parish/school such as central office/chancery/pastoral center personnel, youth ministers who are paid, parish ministers, school support staff, and rectory personnel.
- "Investigation ongoing" describes an allegation in which the diocese/eparchy has started an investigation, but has not yet completed it and has not yet determined credibility.
- "Laicized" or more correctly, "removed from the clerical state" results in the cessation of obligations and rights proper to the clerical state.
- "Minor" includes children and youth under age 18, and any individual over the age of 18 who habitually lacks the use of reason.
- "Priests" includes religious order or diocesan priests in active or supply ministry in a diocese/eparchy (including retired clerics who continue to celebrate occasional sacraments).
- "Sexual Abuse" in context to the Charter involves a "delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years." In addition, as of 2011, it includes "the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of

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fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.”

- “Substantiated” describes an allegation for which the diocese/eparchy has completed an investigation and the allegation has been deemed credible/true based upon the evidence gathered through the investigation.
- “Survivor/victim” refers to any victim of clergy sexual abuse while he or she was a minor, as defined above.
- “Unable to be proven” describes an allegation for which the diocese/eparchy was unable

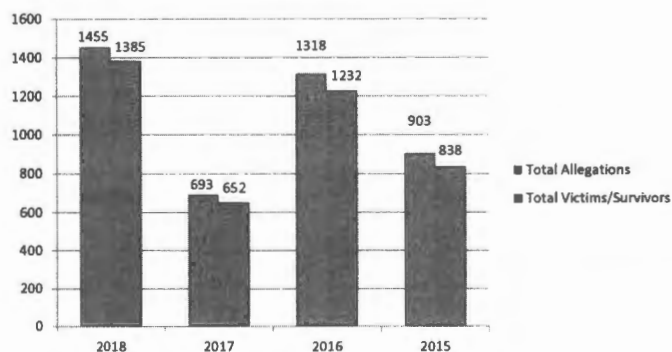
to complete the investigation due to lack of information.

- “Unsubstantiated” describes an allegation for which an investigation is complete and the allegation has been deemed not credible/false based upon the evidence gathered through the investigation.
- “Volunteers” refers to unpaid personnel who assist the diocese/eparchy (including parishes and schools) such as catechists, youth ministers, and coaches.

APPENDIX I: STATISTICS

Between July 1, 2017 and June 30, 2018, 1,385 survivors of child sexual abuse by clergy came forward in 126 Catholic dioceses and eparchies involving 1,455 allegations. These allegations represent reports of abuse between a specific alleged victim and a specific alleged accused, whether the abuse was a single incident or a series of incidents over a period of time. The abuse was purported to have occurred from the 1940’s to the present. Chart 1-1 below summarizes the total allegations and total victims/survivors from 2015 through 2018.

Chart 1-1: Total Allegations/Total Victims 2015–2018



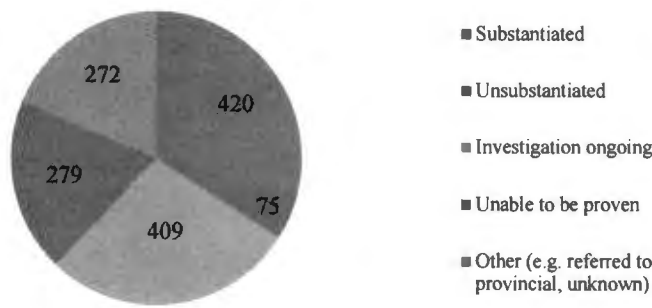
Compared to 2017, the number of allegations has increased significantly. This is mainly due to the additional allegations received in five New York State dioceses as a result of the implementation of their Independent Reconciliation and Compensation programs. These programs allow those who have

previously come forward to dioceses as well as those who have not yet come forward, to be considered for some type of monetary compensation. As a result of these programs, an additional 785 allegations were received by these five dioceses.

For purposes of this audit, the investigation of an allegation has five potential outcomes. An allegation is substantiated when the diocese/eparchy has completed an investigation and the allegation has been deemed credible/true based upon the evidence gathered through the investigation. An allegation is unsubstantiated when an investigation is complete and the allegation has been deemed not credible/false based upon the evidence gathered through the investigation. An allegation is unable to be proven when the diocese/eparchy was unable to complete the investigation due to lack of information. This is generally the outcome of an investigation when the accused cleric is deceased, or his status or location is unknown. Since the information collected was as of June 30, 2018, some allegations were still under investigation. These were categorized as “investigation ongoing.” In other cases, an investigation had not yet begun for various reasons or the allegation had been referred to another diocese/eparchy. These were categorized as “Other.” Chart 1-2 below

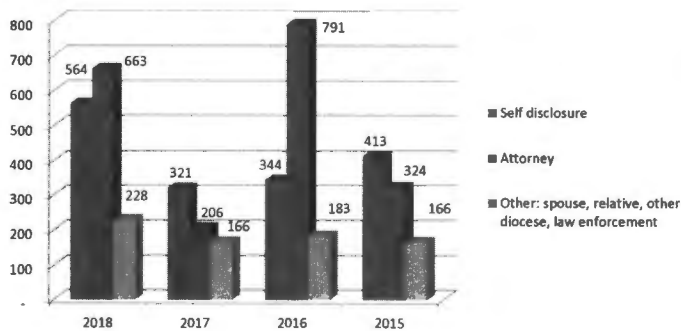
summarizes the status of the 1,455 allegations as of June 30, 2018.

Chart 1-2: Status of Allegations as of June 30, 2018



A total of 663 allegations were brought to the attention of the diocesan/eparchial representatives through an attorney, making this the principal reporting method during the 2017/2018 audit period. The second most popular method of reporting was through self-disclosure, which represented 564 of the total allegations. The remaining 228 reports were made by spouses, relatives, or other representatives such as other dioceses, eparchies, religious orders, or law enforcement officials who brought the allegations to the attention of the diocese/eparchy on behalf of the survivor. Chart 1-3 below summarizes the ways in which allegations were received from 2015 through 2018.

Chart 1-3: Methods of Reporting Allegations 2015-2018



Compared to 2017, the number of allegations reported through an attorney has increased significantly. As previously noted, this was mainly due to the Independent Reconciliation and Compensation

Programs implemented in dioceses throughout New York State.

During the current audit period, dioceses and eparchies provided outreach and support to 472 victims/survivors and their families who reported during this audit period. Continued support was provided to 1,542 victims/survivors and their families who reported abuse in prior audit periods.

As part of the audit procedures, StoneBridge asked dioceses and eparchies to report on Chart A/B the date the abuse was reported as well as the date outreach services were offered. StoneBridge then compared these dates to determine how promptly dioceses and eparchies responded to victims/survivors to offer outreach as required by Article 1. Of the 1,385 victims/survivors who reported during the audit period, 69%, or 952 of them were offered outreach. Those who were not offered outreach were instances where the victim stated in their report to the diocese or eparchy that they did not want any help, anonymous reporting, lack of contact information for the victim, and victims who came through an attorney. Of the total who did receive an offer for outreach, 66%, or 629 of them were offered outreach within 10 days of reporting the abuse, 7%, or 71 were offered outreach between 11 and 30 days of reporting, and 27%, or 252 individuals were above 30 days due to specific circumstances related to attorneys, lawsuits, investigations, or difficulty in contacting the victim.

There were no allegations involving an adult who “habitually lacks the use of reason” during the 2018 audit period.

Of the allegations of child sexual abuse by clergy reported during the audit period, 26 involved current minors. Of this total, 12 were male and 14 were female.

Of the 26 allegations made by current minors, three were substantiated as of June 30, 2018 and the clergy were removed from ministry. These allegations came from three different dioceses.

Seven of the 26 allegations from minors were unsubstantiated as of June 30, 2018.

Three of the 26 allegations from minors were categorized as “unable to be proven” as of June 30, 2018.

Investigations were still in process for six of the allegations at June 30, 2018. The auditors will follow up with these dioceses/eparchies at the end of the

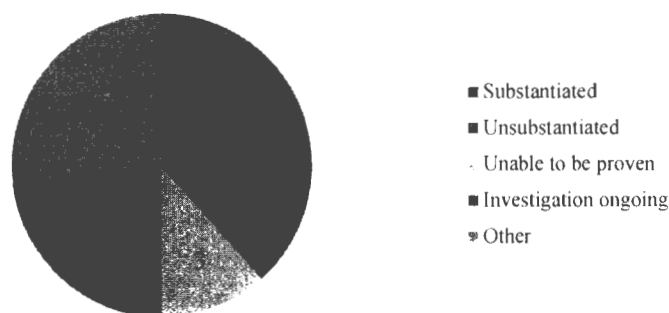
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2019 audit period to inquire about the status of these allegations.

In the “other” category, two allegations were referred to the religious order for their investigation, two were unknown clerics, and three were listed as other as they were not claims of sexual abuse of a minor, but boundary violations.

Chart 4-1 below summarizes the status of each of the 26 claims made by current year minors as of June 30, 2018.

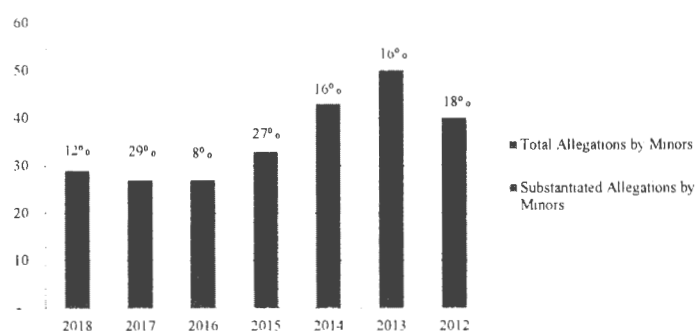
Chart 4-1: Status of Claims by Minors as of June 30, 2018



There were five allegations involving minors from the 2017 audit period that were listed as investigation ongoing at the end of the audit period. As part of the audit procedures for the 2018 audit period, StoneBridge followed up with dioceses/eparchies on these claims to inquire of the outcome. Of the five, one was substantiated, two were unable to be proven, and two were still being investigated as of the end of the 2018 audit period.

Chart 4-2 below compares the percentage of substantiated claims by minors to total claims by minors over the last seven years.

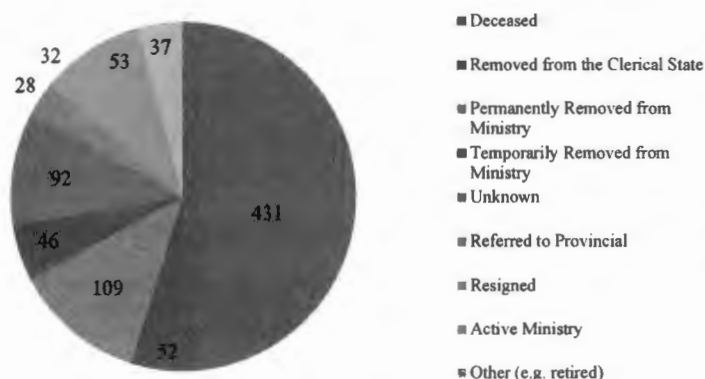
Chart 4-2: Substantiated Allegations Versus Total Allegations Made by Current Minors 2012 - 2018



The number of clerics accused of sexual abuse of a minor during the audit period totaled 880. The accused clerics were categorized as priests, deacons, unknown, or other. An “unknown” cleric is used for a situation in which the victim/survivor was unable to provide the identity of the accused. “Other” represents a cleric from another diocese for which details of ordination and/or incardination were not available/provided. Accused priests for the audit period totaled 801. Of this total, 667 were diocesan priests, 99 belonged to a religious order, and 35 were incardinated elsewhere. There were 13 deacons accused during the audit period. Allegations brought against “unknown” clerics totaled 43, and 23 “other” clerics were accused. Of the total identified clerics, 393 or 49% of them had been accused in previous audit periods.

See Chart 5-1 below for a summary of the status of the 880 accused clerics as of June 30, 2018.

Chart 5-1: Status of Accused Clerics as of June 30, 2018



During the 2018 audit period, six allegations were brought against clerics for possession of child

pornography. As of June 30, 2018, four of these allegations were still under investigation, one allegation was unsubstantiated, and one investigation was terminated as the accused passed away during the process.

These six clerics are included in the statistics presented in Chart 5-1 above.

StoneBridge compiled the current year safe environment training data below. The figures provided by dioceses/eparchies for Article 12 were not audited by StoneBridge. It is important to note that the figures reported in the adult categories below represent individuals who have been trained at least once. The *Charter* does not require clergy, employees, and volunteers to renew safe environment training, but some diocese and eparchies choose to require some form of refresher training. A complete list of safe environment training programs used in dioceses and eparchies is posted on the SCYP website.

Children	2018	2017	2016	2015	2014	2013	2012	2011
Dioceses/eparchies participating	194	194	194	190	188	191	189	187
Total children	4,244,165	4,411,279	4,538,756	4,666,507	4,828,615	4,910,240	4,993,243	5,143,426
Total children trained	3,946,631	4,117,869	4,267,014	4,371,211	4,484,609	4,645,700	4,684,192	4,847,942
Percent trained	93.0%	93.3%	94.0%	93.7%	92.9%	94.6%	93.8%	94.3%
Percent opted out	1.3%	1.0%	1.1%	1.2%	1.0%	1.2%	1.5%	1.2%

Priests	2018	2017	2016	2015	2014	2013	2012	2011
Total priests	34,151	33,917	35,815	36,158	35,470	36,131	38,199	38,374
Total priests trained	33,879	33,448	35,475	35,987	35,319	35,914	38,006	38,150
Percent trained	99.2%	98.6%	99.1%	99.5%	99.6%	99.4%	99.5%	99.4%

Deacons	2018	2017	2016	2015	2014	2013	2012	2011
Total deacons	16,497	16,328	16,423	16,300	16,164	16,245	15,796	15,342
Total deacons trained	16,401	16,177	16,294	16,251	16,089	16,129	15,680	15,259
Percent trained	99.4%	99.1%	99.2%	99.7%	99.5%	99.3%	99.3%	99.5%

Candidates for Ordination	2018	2017	2016	2015	2014	2013	2012	2011
Total candidates	6,819	7,028	6,902	6,577	6,602	6,458	6,372	6,474
Total candidates trained	6,709	6,944	6,847	6,473	6,503	6,360	6,232	6,385
Percent trained	98.4%	98.8%	99.2%	98.4%	98.5%	98.5%	97.8%	98.6%

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Educators	2018	2017	2016	2015	2014	2013	2012	2011
Total educators	176,357	172,832	162,988	164,628	161,669	168,782	168,067	159,689
Total educators trained	174,817	170,678	159,764	162,803	160,757	167,953	166,311	158,390
Percent trained	99.1%	98.8%	98.0%	98.9%	99.4%	99.5%	99.0%	99.2%

Other Employees	2018	2017	2016	2015	2014	2013	2012	2011
Total other employees	268,757	270,750	269,250	269,090	256,668	257,222	258,380	249,133
Total other employees trained	262,920	263,606	258,978	260,356	250,087	251,146	249,918	240,180
Percent trained	97.8%	97.4%	96.2%	96.8%	97.4%	97.6%	96.7%	96.4%

Volunteers	2018	2017	2016	2015	2014	2013	2012	2011
Total volunteers	2,242,109	2,088,272	1,984,063	1,976,248	1,971,201	1,936,983	1,920,001	1,850,149
Total volunteers trained	2,199,956	2,041,019	1,912,152	1,930,262	1,931,872	1,902,143	1,876,558	1,781,849
Percent trained	98.1%	97.7%	96.4%	97.7%	98.0%	98.2%	97.7%	96.3%

StoneBridge compiled the current year background evaluation data below from the 194 dioceses and eparchies that participated in either an on-site or data collection audit. The figures provided by dioceses/eparchies for Article 13 were not audited by StoneBridge. As with Article 12, these figures

represent individuals who have been background checked at least once. The *Charter* is silent as to the frequency of screening, but many dioceses and eparchies have begun rescreening their clergy, employees, and volunteers.

Priests	2018	2017	2016	2015	2014	2013	2012	2011
Dioceses/eparchies participating	194	194	194	190	188	191	189	187
Total priests	34,151	33,917	35,815	36,158	35,470	36,131	38,199	38,374
Total priests background checked	33,929	33,540	35,346	35,720	35,308	35,970	38,045	38,129
Percent checked	99.3%	98.9%	98.7%	98.8%	99.5%	99.6%	99.6%	99.4%

Deacons	2018	2017	2016	2015	2014	2013	2012	2011
Total deacons	16,497	16,328	16,423	16,300	16,164	16,245	15,796	15,342
Total deacons background checked	16,472	16,222	16,050	16,257	16,006	16,199	15,695	15,291
Percent checked	99.8%	99.4%	97.7%	99.7%	99.0%	99.7%	99.4%	99.7%

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Candidates for Ordination	2018	2017	2016	2015	2014	2013	2012	2011
Total candidates	6,819	7,028	6,902	6,577	6,602	6,458	6,372	6,474
Total candidates background checked	6,743	6,971	6,841	6,577	6,568	6,428	6,320	6,386
Percent checked	98.9%	99.2%	99.1%	100.0%	99.5%	99.5%	99.2%	98.6%

Educators	2018	2017	2016	2015	2014	2013	2012	2011
Total educators	176,357	172,832	162,988	164,628	161,669	168,782	168,067	159,689
Total educators background checked	174,912	170,719	157,468	158,556	160,273	168,013	164,935	158,855
Percent checked	99.2%	98.8%	96.6%	96.3%	99.1%	99.5%	98.1%	99.5%

Other Employees	2018	2017	2016	2015	2014	2013	2012	2011
Total other employees	268,757	270,750	269,250	269,090	256,668	257,222	258,380	249,133
Total other employees background checked	265,620	265,599	260,409	263,690	251,189	253,587	250,092	241,063
Percent checked	98.8%	98.1%	96.7%	98.0%	97.9%	98.6%	96.8%	96.8%

Volunteers	2018	2017	2016	2015	2014	2013	2012	2011
Total volunteers	2,242,109	2,088,777	1,984,063	1,976,248	1,971,201	1,936,983	1,920,001	1,850,149
Total volunteers background checked	2,200,527	2,022,360	1,927,053	1,935,310	1,931,612	1,898,136	1,861,160	1,790,178
Percent checked	98.1%	96.8%	97.1%	97.9%	98.0%	98.0%	96.9%	96.8%

APPENDIX II: ON-SITE AUDITS PERFORMED BY STONEBRIDGE DURING 2018

- Archdiocese of Atlanta
- Diocese of Baker
- Archdiocese of Baltimore
- Diocese of Belleville
- Diocese of Biloxi
- Diocese of Boise
- Diocese of Bridgeport
- Diocese of Camden
- Diocese of Colorado Springs
- Diocese of Corpus Christi
- Diocese of Covington
- Diocese of Crookston
- Diocese of Dodge City
- Diocese of Evansville
- Diocese of Fairbanks
- Diocese of Fresno
- Archdiocese of Galveston-Houston
- Diocese of Grand Island
- Diocese of Great Falls-Billings
- Diocese of Greensburg
- Diocese of Honolulu
- Archdiocese of Indianapolis
- Diocese of Juneau
- Archdiocese of Kansas City in Kansas
- Diocese of La Crosse
- Diocese of Lafayette, LA
- Diocese of Lake Charles
- Diocese of Lansing
- Diocese of Laredo
- Diocese of Las Cruces
- Diocese of Lincoln
- Diocese of Little Rock
- Archdiocese of Los Angeles
- Archdiocese of Louisville
- Diocese of Manchester
- Diocese of Memphis
- Diocese of Metuchen
- Archdiocese of New Orleans
- Diocese of New Ulm
- Diocese of Ogdensburg
- Archdiocese of Oklahoma City
- Diocese of Orlando
- Armenian Catholic Eparchy of Our Lady of Nareg
- Diocese of Owensboro
- Byzantine Catholic Eparchy of Passaic
- Diocese of Paterson
- Archdiocese of Philadelphia
- Diocese of Portland, ME
- Diocese of Raleigh
- Diocese of Richmond
- Diocese of Rochester
- Diocese of Sacramento
- Diocese of Saginaw
- Diocese of Salina
- Diocese of San Bernardino
- Archdiocese of San Francisco
- Archdiocese of Santa Fe
- Diocese of Santa Rosa
- Diocese of Savannah
- Archdiocese of Seattle
- Diocese of St. Augustine
- Archdiocese of St. Paul and Minneapolis
- Diocese of Steubenville
- Diocese of Superior
- Diocese of Toledo
- Diocese of Tucson
- Diocese of Wilmington
- Diocese of Winona
- Diocese of Worcester

APPENDIX III: 2018 ONSITE AUDITS INVOLVING STONEBRIDGE PARISH/SCHOOL VISITS

- Archdiocese of Anchorage
- Diocese of Arlington
- Archdiocese of Atlanta
- Diocese of Baker
- Archdiocese of Baltimore
- Diocese of Belleville
- Diocese of Biloxi
- Diocese of Colorado Springs
- Diocese of Covington
- Diocese of Evansville
- Diocese of Grand Island
- Diocese of Honolulu
- Archdiocese of Indianapolis
- Archdiocese of Kansas City in Kansas
- Diocese of La Crosse
- Diocese of Las Cruces
- Diocese of Manchester
- Archdiocese of New Orleans
- Diocese of New Ulm
- Diocese of Ogdensburg
- Diocese of Owensboro
- Diocese of Portland, ME
- Diocese of Rochester
- Diocese of Savannah
- Diocese of St. Augustine
- Diocese of Toledo
- Diocese of Winona
- Diocese of Worcester

SECTION II

2018



CHAPTER THREE

2018 SURVEY OF ALLEGATIONS AND COSTS

A SUMMARY REPORT FOR THE SECRETARIAT OF CHILD AND YOUTH PROTECTION UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

INTRODUCTION

At their Fall General Assembly in November 2004, the United States Conference of Catholic Bishops (USCCB) commissioned the Center for Applied Research in the Apostolate (CARA) at Georgetown University to design and conduct an annual survey of all the dioceses and eparchies whose bishops or eparchs are members of the USCCB. The purpose of this survey is to collect information on new allegations of sexual abuse of minors and the clergy against whom these allegations were made. The survey also gathers information on the amount of money dioceses and eparchies have expended as a result of allegations as well as the amount they have paid for child protection efforts. The national level aggregate results from this survey for each calendar year are prepared for the USCCB and reported in its *Annual Report of the Implementation of the "Charter for the Protection of Children and Young People."* A complete set of the aggregate results for ten years (2004 to 2013) is available on the USCCB website.

Beginning in 2014, the Secretariat of Child and Youth Protection changed the reporting period for this survey to coincide with the reporting period that is used by dioceses and eparchies for their annual audits. Since that time, the annual survey of allegations and costs captures all allegations

reported to dioceses and eparchies between July 1 and June 30. This year's survey, the 2018 Survey of Allegations and Costs, covers the period between July 1, 2017 and June 30, 2018. Where appropriate, this report presents data in tables for audit year 2018 compared to audit year 2017 (July 1, 2016 to June 30, 2017), 2016 (July 1, 2015 to June 30, 2016), 2015 (July 1, 2014 to June 30, 2015), and 2014 (July 1, 2013 to June 30, 2014).¹

The questionnaire for the *2018 Annual Survey of Allegations and Costs* for dioceses and eparchies was designed by CARA in consultation with the Secretariat of Child and Youth Protection and was nearly identical to the versions used from 2004 to 2017. As in previous years, CARA prepared an online version of the survey and hosted it on the CARA website. Bishops and eparchs received information about the process for completing the survey in their mid-July correspondence from the USCCB and were asked to provide the name of the contact person who would complete the survey. The Conference of Major Superiors of Men (CMSM) also invited major superiors of religious institutes of men to complete a similar survey for their congregations, provinces, or monasteries. Religious institutes of brothers also participated in the survey of men's institutes, as they have since 2015. This

¹ Before 2014, this survey was collected on a calendar year basis. For discussion of previous trends in the data, refer to the 2013 Annual Survey of Allegations and Costs as reported in the *2013 Annual Report on the Implementation of the Charter for the Protection of Children and Young People*, published by the USCCB Secretariat of Child and Youth Protection.

year's questionnaire was the first to have alterations in sections to measure the diagnosis of the alleged offenders.

CARA completed data collection for the 2018 annual survey on January 17, 2019. All but one of the 196 dioceses and eparchies of the USCCB completed the survey, for a response rate of 99 percent.² The Diocese of Pittsburgh declined to participate. A total of 196 of the 230 religious institutes that belong to CMSM responded to the survey, for a response rate of 85 percent. The overall response rate for dioceses, eparchies, and religious institutes was 92 percent, higher than the response rate of 86 percent for this survey last year. Once CARA had received all data, it then prepared the national level summary tables and graphs of the findings for the period from July 1, 2017 to June 30, 2018.

DIOCESES AND EPARCHIES

The Data Collection Process

Dioceses and eparchies began submitting their data for the 2018 survey in August 2018. CARA and the Secretariat contacted every diocese or eparchy that had not sent in a contact name by late September, 2018 to obtain the name of a contact person to complete the survey. CARA and the Secretariat sent multiple reminders by e-mail and telephone to these contact persons, to encourage a high response rate.

By January 17, 2019, 195 of the 197 dioceses and eparchies of the USCCB had responded to the survey, for a response rate of 99 percent. The participation rate among dioceses and eparchies has been nearly unanimous each year of this survey. Beginning in 2004 and 2005 with response rates of 93 and 94 percent, respectively, the response reached 99 percent each year from 2006 to 2014, was 100 percent for 2015 and 2016, and was 99 percent last year and this year.

A copy of the survey instrument for dioceses and eparchies is included in this report in Appendix I.

² Due to an error on CARA's part, one recently established eparchy was not included in CARA's survey of dioceses and eparchies for this project: St. Mary Queen of Peace Syro-Malankara Catholic Eparchy in USA and Canada. The eparchy has one bishop and 20 priests and is headquartered in Elmont, New York.

Credible Allegations Received by Dioceses and Eparchies

As is shown in Table 1, the responding dioceses and eparchies reported that between July 1, 2017 and June 30, 2018, they received 864 new credible allegations of sexual abuse of a minor by a diocesan or eparchial priest or deacon.³ These allegations were made by 858 individuals against 436 priests or deacons. Of the 864 new allegations reported during this reporting period (July 1, 2017 through June 30, 2018), three allegations (less than 1 percent) involved children under the age of 18 in 2018. Nearly all of the other allegations were made by adults who are alleging abuse when they were minors.

Table 1. New Credible Allegations Received by Dioceses and Eparchies

	2014	2015	2016	2017	2018	Change (+/-) 2017-2018	Percentage Change
Victims	291	314	728	369	858	+489	+133%
Allegations	294	321	730	373	864	+491	+132%
Offenders	211	227	361	290	436	+146	+50%

Sources: Annual Survey of Allegations and Costs, 2014-2018

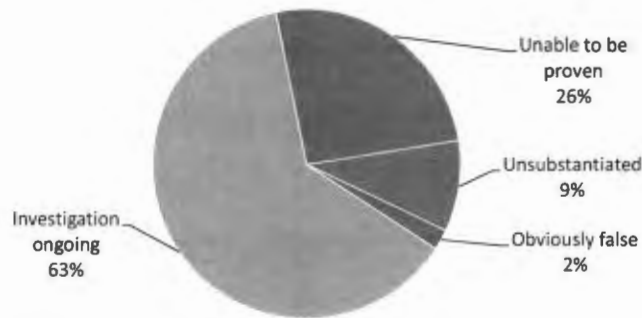
Compared to the previous year (July 1, 2016 to June 30, 2017), the numbers of victims, allegations, and offenders reported for July 1, 2017 to June 30, 2018 represent a 132 percent increase in allegations, a 133 percent increase in victims, and a 51 percent increase in offenders reported.

Determination of Credibility

Every diocese and eparchy follows a process to determine the credibility of any allegation of clergy sexual abuse, as set forth in canon law and the *Charter for the Protection of Children and Young People*. Figure 1 presents the outcome for all 840 allegations received between July 1, 2017 and June 30, 2018 that did not meet the threshold for credibility during that time period. Dioceses and eparchies were asked to categorize new allegations this year that have *not* met the threshold for credibility into one of four categories: unsubstantiated, obviously false, investigation ongoing, or unable to be proven.

³ The reported numbers from four dioceses within the State of New York, when combined, make up 68 percent of the 864 credible allegations and 48 percent of the 436 alleged offenders.

Figure 1. Determination of Credibility for New Allegations: Dioceses and Eparchies

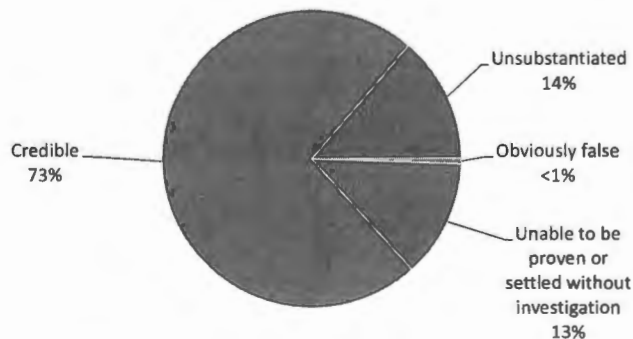


Source: 2018 Survey of Allegations and Costs

As can be seen in Figure 1, more than three-fifths of these allegations are still being investigated (63 percent), a quarter are unable to be proven (26 percent), one in ten (9 percent) is unsubstantiated, and 2 percent (18 allegations) have been determined to be false.

Figure 2 presents the disposition for the 313 allegations received before July 1, 2017 that were resolved by June 30, 2018. Nearly three in four (73 percent) were found to be credible, 13 percent were unable to be proven or settled without investigation, 14 percent were found to be unsubstantiated, and less than 1 percent (two allegations) were determined to be false.

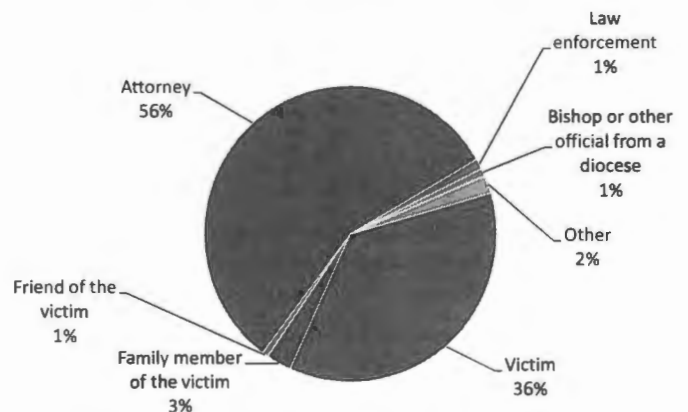
Figure 2. Resolution in 2018 of Allegations Received before July 1, 2017: Dioceses and Eparchies



Source: 2018 Survey of Allegations and Costs

Figure 3 illustrates the way in which the 864 new credible allegations of abuse were reported to the dioceses or eparchies between July 1, 2017 and June 30, 2018. More than half of new allegations were reported by an attorney (56 percent) and nearly two-fifths were reported by a victim (36 percent). Less than one in 20 were reported by any other category of persons: a family member of a victim (3 percent), a friend of a victim (1 percent), a bishop or other official from a diocese (1 percent), and law enforcement (1 percent). Two percent were reported by an “other” source, such as a therapist, former teacher, the news media, a pastor or priest of the diocese, a parishioner, a document review by the diocese, a witness, or an anonymous source.

Figure 3. Method of Reporting Allegations of Abuse: Dioceses and Eparchies



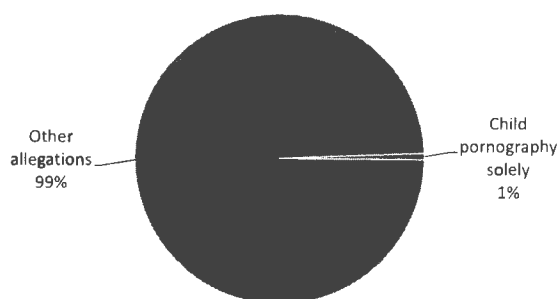
Source: 2018 Survey of Allegations and Costs

Compared to year 2017 (July 1, 2016 to June 30, 2017), there are more allegations reported by attorneys (56 percent in 2018 compared to 36 percent in 2017) and less reported by victims (36 percent in 2018 compared to 45 percent in 2017) or by a family member (3 percent in 2018 compared to 10 percent in 2017).

Figure 4 presents the percentage of all new allegations of abuse that were cases solely involving child pornography. Of the 864 total allegations from

July 1, 2017 to June 30, 2018, six allegations solely involved child pornography.

Figure 4. Percentage of Allegations Involving Solely Child Pornography: Dioceses and Eparchies



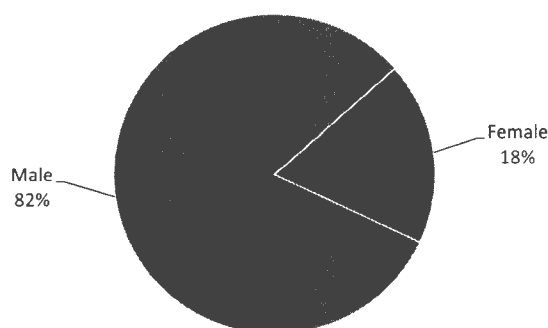
Source: 2018 Survey of Allegations and Costs

The percentages in Figure 4 are identical to those reported for the previous year (July 1, 2016 to June 30, 2017), where four allegations (1 percent) solely involved child pornography.

Victims, Offenses, and Offenders

The sex of seven of the 858 alleged victims reported between July 1, 2017 and June 30, 2018 was not identified in the allegation. Among those for whom the sex of the victim was reported, 82 percent (694 victims) were male and 18 percent (157 victims) were female. This proportion is illustrated in Figure 5.

Figure 5. Sex of Abuse Victim: Dioceses and Eparchies



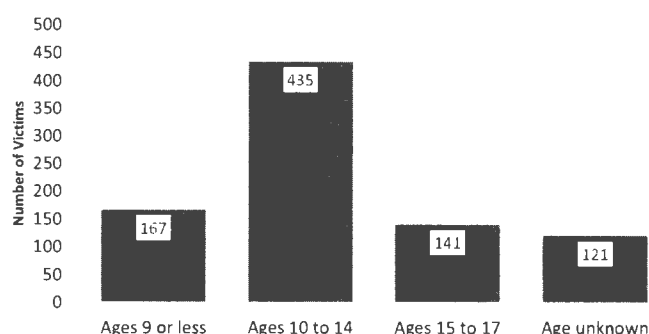
Source: 2018 Survey of Allegations and Costs

The percentages reported for year 2018 in Figure 5 are identical to those reported for year 2017 (July

1, 2016 to June 30, 2017), where 82 percent of the victims were male and 18 percent were female.

Nearly three-fifths (59 percent) of the 864 allegations involved victims who were between the ages of 10 and 14 when the alleged abuse began. About one-fifth was under age 10 (22 percent) or between the ages of 15 and 17 (19 percent). For over one-tenth, the age could not be determined (14 percent). Figure 6 presents the distribution of victims by age at the time the alleged abuse began.

Figure 6. Age of Victim When Abuse Began: Dioceses and Eparchies

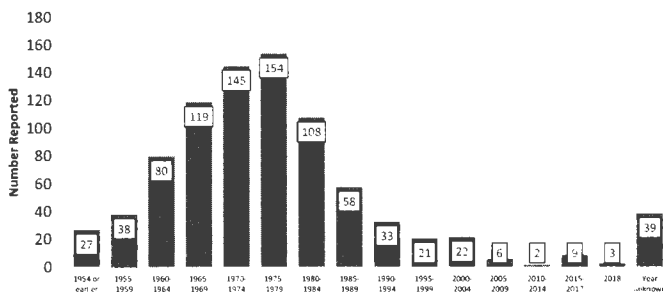


Source: 2018 Survey of Costs and Allegations

The proportion of victims between the ages 10 and 14 increased between year 2017 (July 1, 2016 to June 30, 2017) and 2018, from 48 percent to 59 percent. The other age categories were similar, with those under age ten increasing from 19 percent in 2017 to 22 percent in 2018 and those ages 15 to 17 decreasing from 20 percent in 2017 to 19 percent in 2018.

Figure 7 shows the years in which the abuse reported between July 1, 2017 and June 30, 2018 was alleged to have occurred or begun. Forty-seven percent of all new allegations were said to have occurred or begun before 1975, 43 percent between 1975 and 1999, and 5 percent since 2000. The most common time period for allegations reported was 1975-1979 (154 allegations), followed by 1970-1974 (145 allegations). For 39 of the new allegations (5 percent) reported between July 1, 2017 and June 30, 2018, no time frame for the alleged abuse could be determined by the allegation.

Figure 7. Year Alleged Offense Occurred or Began: Dioceses and Eparchies

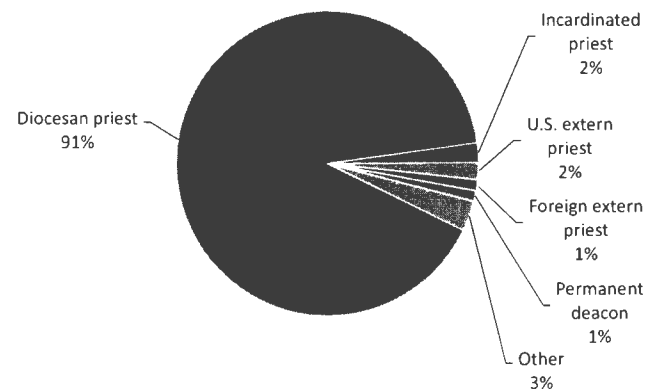


Source: 2018 Survey of Costs and Allegations

Proportionately, the numbers reported in Figure 7 for year 2018 are very similar to those reported for year 2017 (July 1, 2016 to June 30, 2017). For that time period, 48 percent of alleged offenses occurred or began before 1975, 40 percent between 1975 and 1999, 6 percent after 2000, and 7 percent had no time frame.

Of the 436 diocesan or eparchial priests or deacons that were identified in new allegations between July 1, 2017 and June 30, 2018, more than nine-tenths (92 percent) had been ordained for the diocese or eparchy in which the abuse was alleged to have occurred (91 percent were diocesan priests and 1 percent was a permanent deacon). One to 2 percent of those identified were priests incardinated into that diocese or eparchy at the time of the alleged abuse (2 percent), extern priests from another U.S. diocese or eparchy (2 percent), or extern priests from another country (1 percent). Three percent of alleged perpetrators were classified as “other,” most commonly because they were either unnamed in the allegation or their name was unknown to the diocese or eparchy. Figure 8 displays the ecclesial status of offenders at the time of the alleged offense.

Figure 8. Ecclesial Status of Alleged Perpetrator: Dioceses and Eparchies

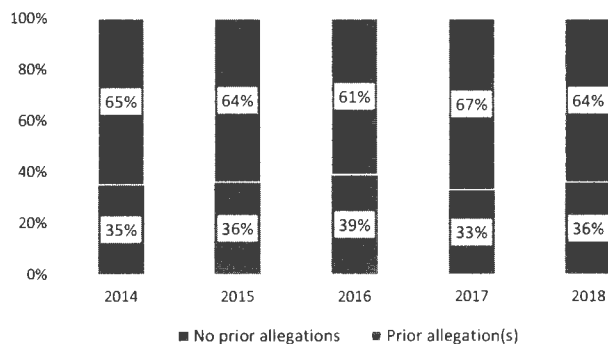


Source: 2018 Survey of Allegations and Costs

The percentages in Figure 8 for year 2018 are similar to those reported for year 2017 (July 1, 2016 to June 30, 2017), where 88 percent of alleged perpetrators were priests who had been ordained for the diocese or eparchy in which the abuse was alleged to have occurred. All other categories reported for that time period represented 1 to 5 percent of alleged perpetrators, similar to the percentages shown in Figure 8.

Similar to previous years, nearly two-thirds (64 percent) of the 436 priests and deacons identified as alleged offenders between July 1, 2017 and June 30, 2018 had already been identified in prior allegations. Figure 9 depicts the proportion that had prior allegations each year.

Figure 9. Percentage of Alleged Perpetrators with Prior Allegations: Dioceses and Eparchies



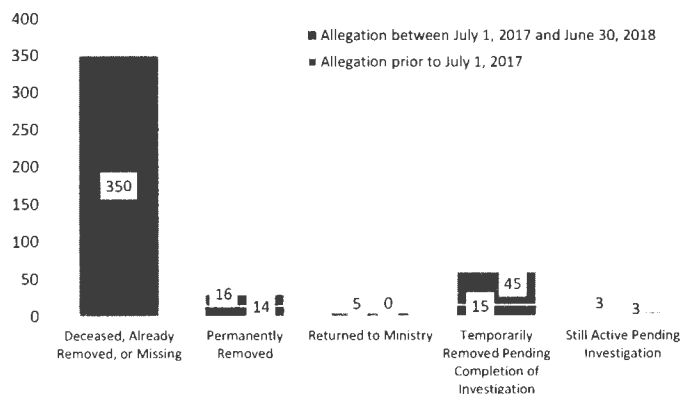
Source: 2018 Survey of Allegations and Costs

More than nine in ten alleged offenders (92 percent) identified between July 1, 2017 and June 30, 2018 are deceased, already removed from ministry, already laicized, or missing. Another 14 priests or deacons (4 percent) identified during year 2018 were permanently removed from ministry during that time. In addition to the 14 offenders who were permanently removed from ministry between July 1, 2017 and June 30, 2018, another 16 priests or deacons who had been identified in allegations of abuse *before* July 1, 2017 were permanently removed from ministry between July 1, 2017 and June 30, 2018.

While no priests or deacons identified during year 2018 were returned to ministry between July 1, 2017 and June 30, 2018, based on the resolution of allegations against them, five priests or deacons who had been identified in allegations of abuse before July 1, 2018 were returned to ministry between July 1, 2017 and June 30, 2018, based on the resolution of allegations against them. In addition, 15 priests or deacons have been temporarily removed from ministry pending completion of an investigation and another 45 remain temporarily removed pending

completion of an investigation from a previous year. Notwithstanding the year in which the abuse was reported, six diocesan and eparchial clergy remain in active ministry pending a preliminary investigation of an allegation. Finally, the current status of 13 percent of the alleged perpetrators for year 2018 was not reported by responding dioceses or eparchies. Figure 10 shows the current status of alleged offenders.

Figure 10. Current Status of Alleged Perpetrators: Dioceses and Eparchies



Source: 2018 Survey of Allegations and Costs

Costs to Dioceses and Eparchies

Dioceses and eparchies that responded to the survey and reported costs related to allegations paid out \$239,172,851 between July 1, 2017 and June 30, 2018. This includes payments for allegations reported in previous years. Thirty-eight responding dioceses and eparchies reported no expenditures during this time period related to allegations of sexual abuse of a minor. Table 2 presents payments by dioceses and eparchies according to several categories of allegation-related expenses.

Table 2. Costs Related to Allegations by Dioceses and Eparchies

	Settlements	Other Payments to Victims	Support for Offenders	Attorneys' Fees	Other Costs	GRAND TOTAL
2014	\$56,987,635	\$7,176,376	\$12,281,089	\$26,163,298	\$3,890,782	\$106,499,180
2015	\$87,067,257	\$8,754,747	\$11,500,539	\$30,148,535	\$3,812,716	\$141,283,794
2016	\$53,928,745	\$24,148,603	\$11,355,969	\$35,460,551	\$2,020,470	\$126,914,338
2017	\$162,039,485	\$10,105,226	\$10,157,172	\$27,912,123	\$2,761,290	\$212,975,296
2018	\$180,475,951	\$6,914,194	\$20,035,914	\$25,990,265	\$5,755,823	\$239,172,147
Change (+/-)						
2017-2018	+\$18,436,466	-\$3,191,032	+\$9,878,742	-\$1,921,858	+\$2,994,533	+\$26,196,851

Sources: Annual Survey of Allegations and Costs, 2014-2018

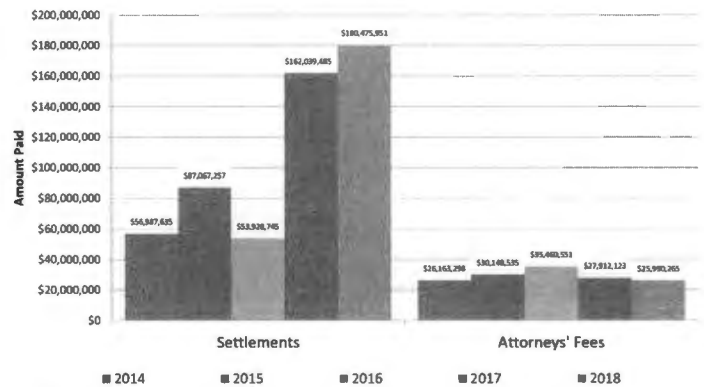
Three-fourths of the payments made by dioceses and eparchies between July 1, 2016 and June 30, 2017 were for settlements to victims (75 percent) and a tenth of the total cost is for attorney's fees⁴ (11 percent). Other payments to victims, if not already included in the settlement, account for 3 percent of all allegation-related costs, and support for offenders (including therapy, living expenses, legal expenses, etc.) amounts to another 8 percent.

Among the "other" allegation-related costs reported by dioceses and eparchies (\$5,755,823 or 2 percent) are payments for items such as investigations of allegations, USCCB compliance audit costs, review board costs, insurance costs, background checks, administrative costs, compensation program costs, training costs, bankruptcy-related costs, monitoring services for offenders, canonical trial expenses, consulting fees, and future victims' trust administration fees.

As can be seen in Table 2, the total costs for year 2018 (\$239,172,147) is 12 percent higher than that reported for year 2017 (\$212,975,296). That increase is mostly due to the increase in the amount paid in settlements and for the support for offenders for the year 2018. Four dioceses reported very high settlement costs of more than \$19 million each, altogether accounting for 82 percent of the \$180,475,951 paid out in settlement to victims.

Figure 11 displays the costs paid by dioceses and eparchies for settlements and for attorneys' fees for audit years 2014 through 2018. Compared to year 2017, settlements have increased by 11 percent and attorney's fees have decreased by 7 percent.

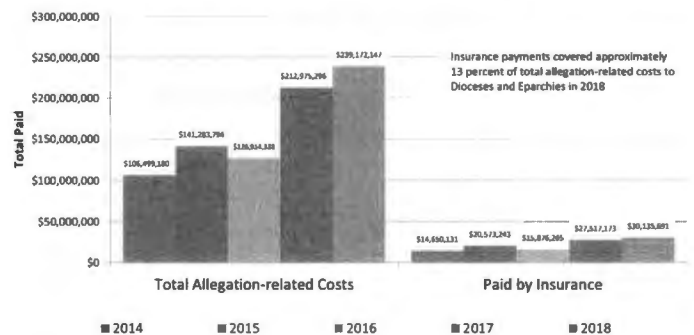
Figure 11. Payments for Settlements and Attorney's Fees: Dioceses and Eparchies



Source: Annual Survey of Allegations and Costs, 2014-2018

In Figure 12, the total allegation-related costs paid by dioceses and eparchies are shown as well as the approximate proportion of those costs that were covered by diocesan insurance. Diocesan insurance payments covered \$27,517,173 (13 percent) of the total allegation-related costs paid by dioceses and eparchies between July 1, 2016 and June 30, 2017, identical to the 13 percent paid by insurance during year 2016 (July 1, 2015 to June 30, 2016).

Figure 12. Proportion of Total Allegation-related Costs Paid by Insurance: Dioceses and Eparchies



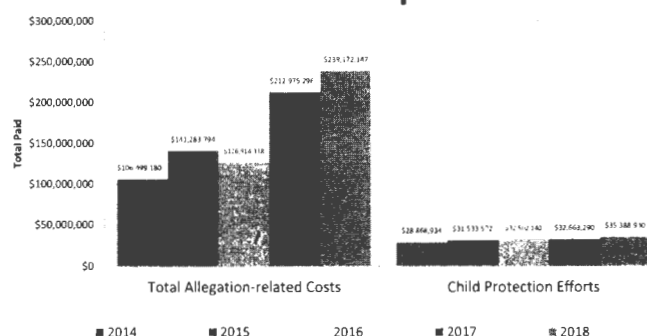
Source: Annual Survey of Allegations and Costs, 2014-2018

In addition to allegations-related expenditures, at least \$35,388,940 was spent by dioceses and eparchies for child protection efforts such as safe environment coordinators, training programs and background checks. This represents an 8 percent increase from the amount reported for child

⁴ Attorneys' fees include all costs for attorneys paid by dioceses and eparchies between July 1, 2017 and June 30, 2018 as the result of allegations of sexual abuse of a minor.

protection efforts (\$32,663,290) for year 2017 (July 1, 2016 to June 30, 2017). Figure 13 compares the allegation-related costs to child protection expenditures paid by dioceses and eparchies in audit years 2014 through 2018.

Figure 13. Total Allegation-related Costs and Child Protection Efforts: Dioceses and Eparchies



Source: Annual Survey of Allegations and Costs, 2014-2018

Adding together the total allegation-related costs and the amount spent on child protection efforts reported in year 2018, the total comes to \$274,561,087. This is a 12 percent increase from the \$245,638,586 reported during audit year 2017.

RELIGIOUS INSTITUTES

The Conference of Major Superiors of Men (CMSM) also encouraged the major superiors of religious institutes of men to complete a survey for their congregations, provinces, or monasteries. Since 2014, brother-only institutes were also invited to participate in the survey. Much of the survey was nearly identical to the survey for dioceses and eparchies and was also available online at the same site as the survey for dioceses and eparchies. CMSM sent a letter and a copy of the survey to all member major superiors in early September 2018, requesting their participation. CARA and CMSM also sent several reminders by e-mail to major superiors to encourage them to respond. By December 11, 2018, CARA received responses from 196 of the 230 institutes that belong to CMSM, for a response rate of 85 percent. This is higher than the response for previous years of this survey, which was 74 percent for 2017, 78 percent in 2016, 77 percent in 2015, 73

percent in 2014, 2012, 2011, 2009, 2008, and 2007, 72 percent in 2010, 71 percent in 2004, 68 percent in 2006, and 67 percent in 2005.

A copy of the survey instrument for religious institutes is included in Appendix II.

Credible Allegations Received by Religious Institutes

The responding religious institutes reported that between July 1, 2017 and June 30, 2018 they received 187 new credible allegations of sexual abuse of a minor committed by a priest, brother, or deacon of the community.⁵ These allegations were made by 186 persons against 87 individuals who were priest, brother, or deacon members of the community at the time the offense was alleged to have occurred.

Table 3 presents these numbers. Of the 187 new allegations reported by religious institutes between July 1, 2017 and June 30, 2018, one involved a child under the age of 18 in 2018. Nearly all of the other allegations were made by adults who are alleging abuse when they were minors.

Table 3. New Credible Allegations Received by Religious Institutes

	2014	2015	2016	2017	2018	Change (+/-) 2017-2018	Percentage Change
Victims	39	70	183	62	186	+124	+200%
Allegations	40	71	184	63	187	+124	+197%
Offenders	34	49	102	43	87	+44	+102%

Sources: Annual Survey of Allegations and Costs, 2014-2018

Compared to year 2017 (July 1, 2016 to June 30, 2017), the numbers for year 2018 represent a 102 percent increase for the number of offenders and a 197-200 percent increase for the numbers of allegations and victims. Much of the spike in 2018's numbers is linked to a single religious institute that had many allegations go forward due to a Chapter 11 filing.

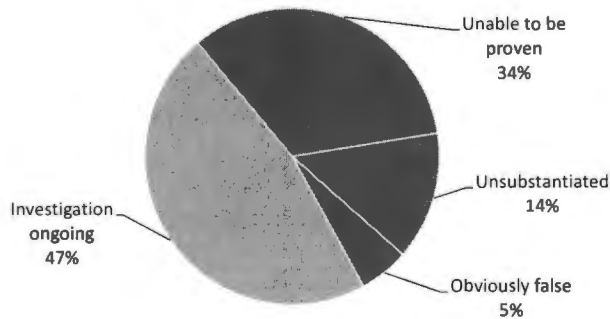
Determination of Credibility

Every religious institute follows a process to determine the credibility of any allegation of clergy sexual abuse, as set forth in canon law and as advised

⁵ About half (49 percent) of the new credible allegations come from four religious institutes, one of whom had 64 new allegations proceed this reporting year due to a Chapter 11 filing. These four institutes also identified 20 of the 87 alleged offenders.

in the *Charter for the Protection of Children and Young People*. Figure 14 presents the outcome for 128 allegations received between July 1, 2017 and June 30, 2018 that did not meet the threshold for credibility. This is the third year that religious institutes were asked to categorize new allegations that have not met the threshold for credibility into one of four categories: unsubstantiated, obviously false, investigation ongoing, and unable to be proven.

Figure 14. Determination of Credibility for New Allegations: Religious Institutes

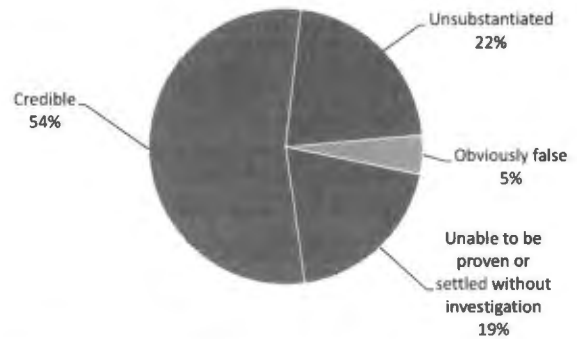


Source: 2018 Survey of Allegations and Costs

As can be seen in Figure 14, nearly half of new allegations that have not met the threshold for credibility are still being investigated (47 percent), a third are unable to be proven (34 percent), just over one in ten is unsubstantiated (14 percent), and 5 percent have been determined to be false.

Figure 15 shows how those allegations received before July 1, 2017 were resolved by June 30, 2018. More than half were found to be credible (54 percent), about one in five was found to be unsubstantiated (22 percent), one in five was unable to be proven or settled without investigation (19 percent), and one in 20 was determined to be false (5 percent).

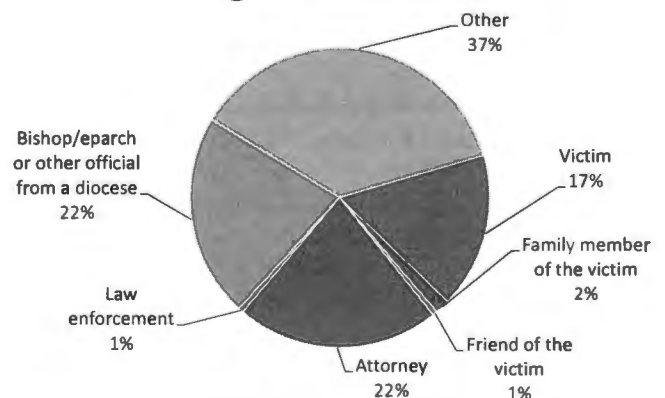
Figure 15. Resolution in 2018 of Allegations Received before July 1, 2017: Religious Institutes



Source: 2018 Survey of Allegations and Costs

Figure 16 displays the way in which the 187 new credible allegations of abuse were reported to the religious institutes between July 1, 2017 and June 30, 2018. About a fifth of allegations were reported to the institute by an attorney (22 percent) or by a bishop/eparch or official from a diocese (22 percent). About one-sixth was reported by the victim (17 percent), with 2 percent reported by a victim's family and 1 percent by a victim's friend. One percent was reported by law enforcement. Among the 37 percent who wrote in an "other" source, 64 were part of the claims filed in Chapter 11 process, with some of these 64 having been filed as lawsuits in previous years but those lawsuits had not moved forward and were later withdrawn; two others were reported by school administrators and two more were reported by a victims abuse coordinator.

Figure 16. Method of Reporting Allegations of Abuse: Religious Institutes

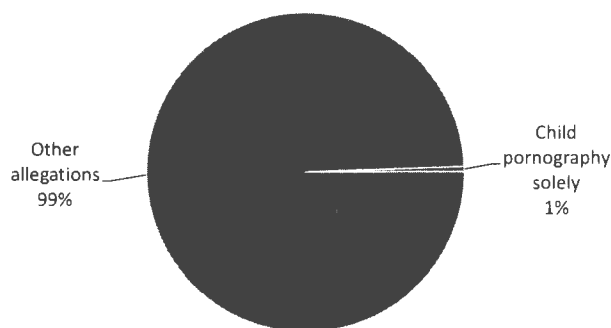


Source: 2018 Survey of Allegations and Costs

Compared to year 2017, more allegations were reported by an “other” source (37 percent compared to 9 percent) and fewer allegations were reported by an attorney (22 percent compared to 35 percent) or by a bishop/eparch or other official from a diocese (22 percent compared to 35 percent).

One of the 187 new allegations was a case solely involving child pornography, as is shown in Figure 17.

Figure 17. Percentage of Allegations Involving Solely Child Pornography: Religious Institutes



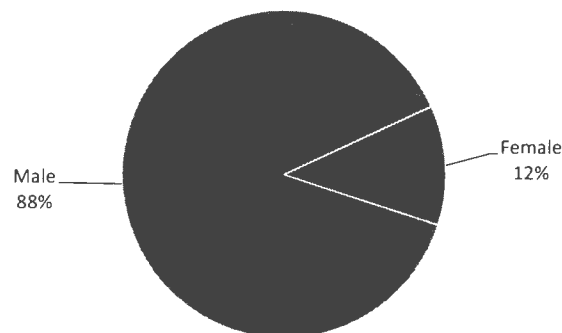
Source: 2018 Survey of Allegations and Costs

In report year 2017 (July 1, 2016 to June 30, 2017), one of the allegations solely involved child pornography, identical to the one reported for 2018.

Victims, Offenses, and Offenders

Among the 186 alleged victims for whom the sex of the victim was reported, nearly nine-tenths were male (88 percent); just over one in ten (12 percent) was female. The proportion male and female is displayed in Figure 18.

Figure 18. Sex of Abuse Victim: Religious Institutes

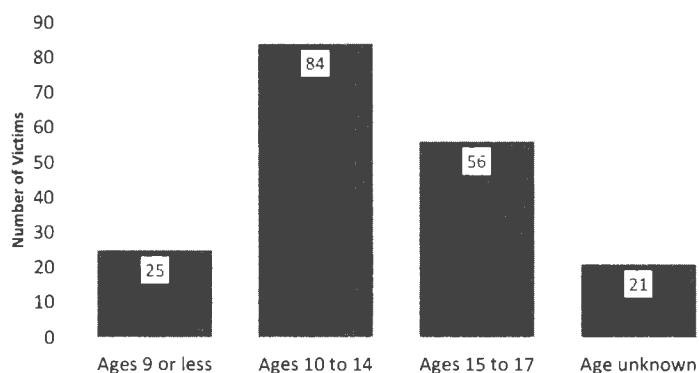


Source: 2018 Survey of Allegations and Costs

The percentage male among victims (88 percent) is slightly higher than that reported for year 2017 (84 percent).

More than four in ten victims (45 percent) were ages 10 to 14 when the alleged abuse began, with another three-tenths (30 percent) between ages 15 and 17. More than one in ten were under age ten (13 percent) and for one in ten (11 percent) an age was not reported. Figure 19 presents the distribution of victims by age at the time the alleged abuse began.

Figure 19. Age of Victim When Abuse Began: Religious Institutes



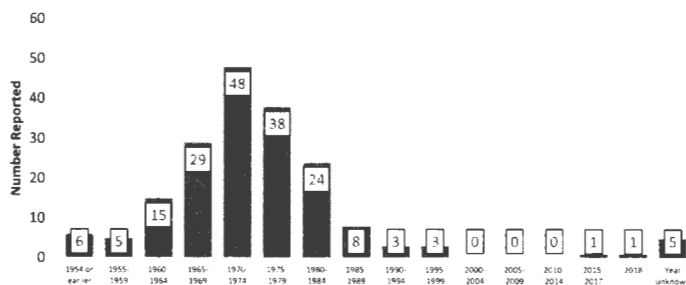
Source: 2018 Survey of Allegations and Costs

The proportions for the previous reporting year (2017) differ only slightly from those presented in Figure 19. Between July 1, 2016 and June 30, 2017, 45 percent of the victims were between the ages of 10 and 14 (identical to the 45 percent reported in 2018), 29 percent were between 15 and 17

(compared to 30 percent in 2018), 16 percent were under age 10 (compared to 14 percent in 2018), and 10 percent were of an unknown age (compared to 11 percent in 2018).

More than half of new allegations reported between July 1, 2017 and June 30, 2018 (55 percent) are alleged to have occurred or begun before 1975. Forty-one percent occurred or began between 1975 and 1999, and 1 percent (two allegations) occurred or began after 2000. Religious institutes reported that 1970-1974 (48 allegations) was the most common time period for the alleged occurrences. Figure 20 illustrates the years when the allegations reported in year 2018 were said to have occurred or begun.

Figure 20. Year Alleged Offense Occurred or Began: Religious Institutes



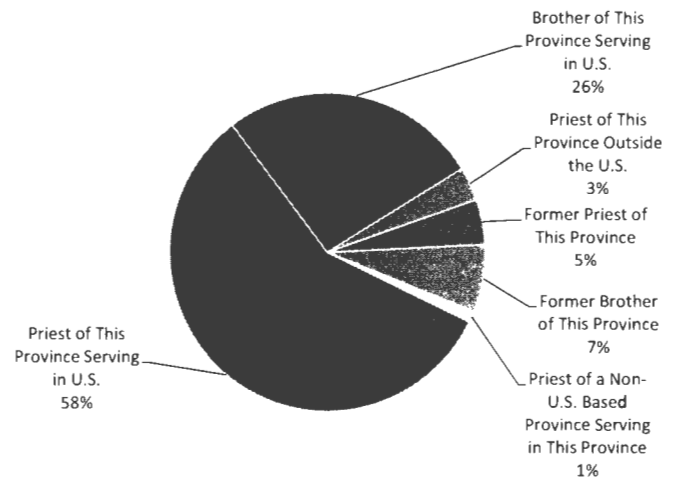
Source: 2018 Survey of Allegations and Costs

In the previous reporting year (July 1, 2016 to June 30, 2017), 47 percent are alleged to have occurred or begun before 1975, 50 percent between 1975 and 1999, and 3 percent since 2000.

The survey for 2018 again asks about both religious priests and religious brothers who were alleged perpetrators. Figure 21 displays the ecclesial status of offenders at the time of the alleged abuse. Of the 87 religious priests and brothers against whom new allegations were made between July 1, 2017 and June 30, 2018, nearly six in ten (58 percent) were priests of a U.S. province of the religious institute serving in the United States at the time the abuse was alleged to have occurred, a quarter (26 percent) were religious brothers of a U.S. province of the religious institute, and none were deacons of a U.S. province of the religious institute. About one in 20 was either a former priest of the province (5 percent) or a priest of the province assigned outside of the U.S. (3 percent). Seven percent were formerly brothers of the province but no longer members of

the religious institute. Finally, 1 percent was a priest member of a non-U.S. based province but serving in the province of the religious institute.

Figure 21. Ecclesial Status of Alleged Perpetrator: Religious Institutes



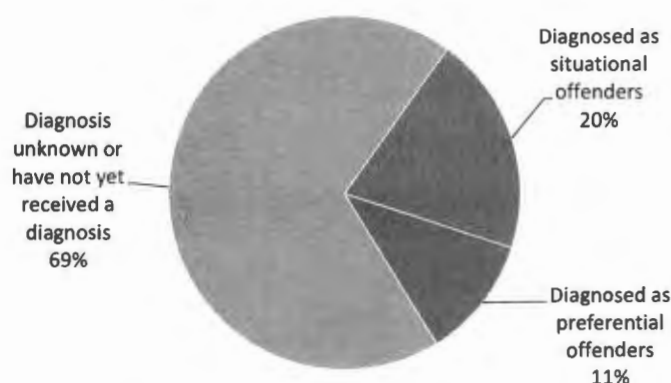
Source: 2018 Survey of Allegations and Costs

Compared to the previous reporting year (July 1, 2016 to June 30, 2017), there is a higher proportion of brothers of the province assigned within the U.S. who are alleged perpetrators (from 17 percent in 2017 to 26 percent in 2018).

This year, for the first time, questions were added to the survey for religious institutes concerning the psychological diagnosis of the alleged perpetrators reported in the current year, with definitions provided to responding religious institutes. Those diagnosed as situational offenders were defined as those who molest “the child for various reasons – most often because of availability – whether male or female – but do NOT have a preference for pre-pubescent children.” Perpetrators diagnosed as preferential offenders “are most often ‘pedophiles,’ who prefer and seek out jobs or ministries with pre-pubescent children.” Finally, those whose diagnosis is not known are those whose records are too “unclear to distinguish any type.” The proportion of alleged perpetrators from the 2018 reporting year that fit each definition is presented in Figure 22 below. More than two in three do not have diagnoses (69 percent), 20 percent have been identified

as situational offenders, and 11 percent have been identified as preferential offenders.

Figure 22. Diagnosis of Alleged Perpetrators Reported in 2018: Religious Institutes



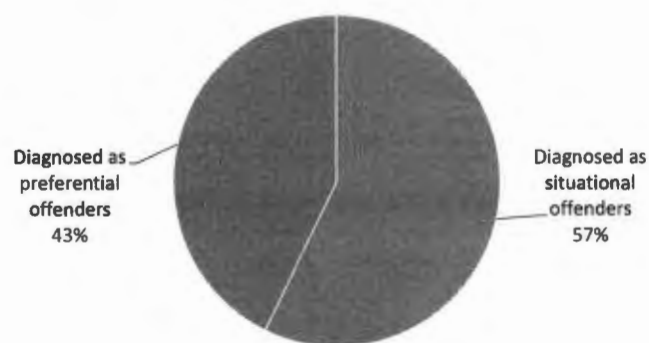
Source: 2018 Survey of Allegations and Costs

Among those reported in Figure 22, responding religious institutes were also asked how many from each category were known to have reoffended. One-quarter of those diagnosed as situational offenders re-offended (25 percent), one-third of those diagnosed as preferential offenders re-offended (33 percent), and less than one-tenth of those undiagnosed re-offended (7 percent).

Also for the first time, similar questions were added concerning the psychological diagnosis of the alleged perpetrators who were identified prior to July 1, 2017. The proportion of alleged perpetrators from previous years that fit each definition is presented in Figure 23 below. A total of 131 previous alleged offenders were included in the reporting. Nearly six-tenths (57 percent) have been identified

as diagnosed situational offenders and 43 percent have been identified as preferential offenders.⁶

Figure 23. Diagnosis of Alleged Perpetrators in 2017 or Earlier: Religious Institutes



Source: 2018 Survey of Allegations and Costs

Among those reported in Figure 23 above, responding religious institutes were also asked how many from each category were known to have reoffended. About one in 20 of those diagnosed as situational offenders re-offended (7 percent), identical to the percentage of those diagnosed as preferential offenders who re-offended (7 percent),

COSTS TO RELIGIOUS INSTITUTES

The responding religious institutes reported paying \$23,447,390 between July 1, 2017 and June 30, 2018 for costs related to allegations. This includes costs paid during this period for allegations reported in previous years. Table 4 presents the payments by religious institutes across several categories of allegation-related expenses.

⁶ In contrast to the series of questions represented in the previous pie chart, those whose diagnosis is not known were not included in this series of questions.

Table 4. Costs Related to Allegations by Religious Institutes

	Settlements	Other Payments to Victims	Support for Offenders	Attorneys' Fees	Other Costs	GRAND TOTAL
2014	\$5,950,438	\$570,721	\$3,121,958	\$2,611,220	\$326,130	\$12,580,467
2015	\$5,451,612	\$337,696	\$2,507,513	\$3,592,233	\$446,696	\$12,335,750
2016	\$6,451,112	\$533,626	\$2,887,150	\$4,427,186	\$106,389	\$14,405,463
2017	\$6,749,006	\$466,591	\$2,869,490	\$5,097,723	\$798,569	\$15,981,379
2018	\$13,870,340	\$403,710	\$3,330,931	\$4,527,393	\$1,315,016	\$23,447,390
Change (+/-)						
2017-2018	+\$7,121,334	-\$62,881	+\$461,441	-\$570,330	+\$516,447	+\$7,466,011

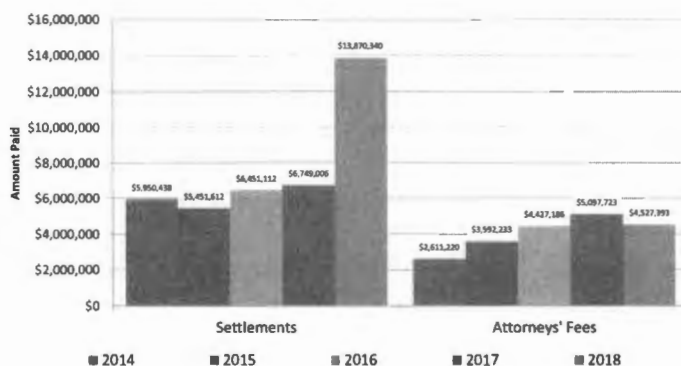
Sources: Annual Survey of Allegations and Costs, 2014-2018

Six-tenths of the payments made by religious institutes between July 1, 2016 and June 30, 2017 (59 percent of all costs related to allegations reported by religious institutes) were for settlements to victims.⁷ Other payments to victims, outside of settlements, were \$403,710 (2 percent). Attorneys' fees were an additional \$4.5 million (19 percent). Support for offenders (including therapy, living expenses, legal expenses, etc.) amounted to \$3,330,931 (14 percent).

An additional \$1,315,016 (6 percent) was for other costs. Payments designated as "other costs" reported by religious institutes included bankruptcy costs, investigators, consultant fees, Praesidium accreditation costs, Review Board costs, administrative expenses, and travel costs.

Compared to the previous year (July 1, 2016 to June 30, 2017), total costs related to allegations were up 47 percent for 2018, mostly due to an increase in the amounts of settlements paid to victims.

Figure 24 illustrates the settlement-related costs and attorney's fees paid by religious institutes during reporting years 2014 through 2018. Four religious institutes with relatively large settlements account for 72 percent of all settlement-related costs in year 2018. Compared to year 2017, settlement-related costs increased by about \$7 million, an increase of 106 percent. Attorneys' fees in year 2018 decreased by more than \$500,000 compared to year 2017, an 11 percent decrease.

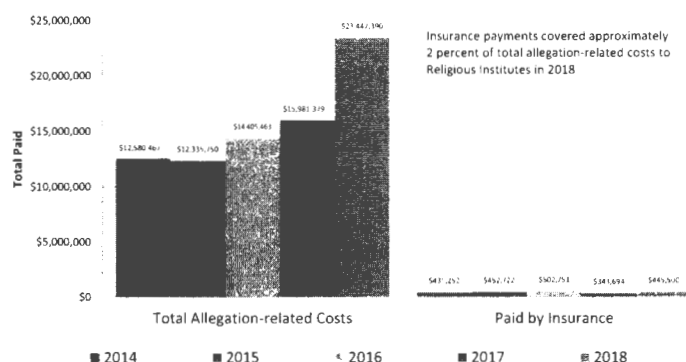
Figure 24. Payments for Settlements and Attorneys' Fees: Religious Institutes

Source: Annual Survey of Allegations and Costs, 2014-2018

Religious institutes that responded to the question reported that 2 percent of the total costs related to allegations between July 1, 2017 and June 30, 2018 were covered by religious institutes' insurance. Figure 25 displays the total allegation-related costs paid by religious institutes for reporting years 2014 to 2018 as well as the costs that were covered by insurance. The percentage covered by insurance in year 2017 (3 percent) was slightly higher than the percentage in year 2018 (2 percent).

⁷ The settlements to victims paid by three of the religious institutes account for 72 percent of the \$13,870,340 paid by religious institutes overall.

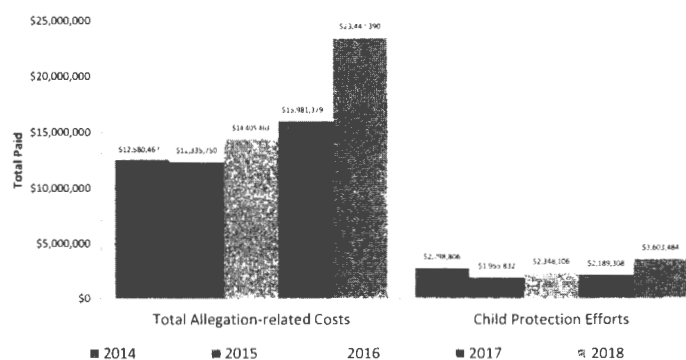
Figure 25. Approximate Percentage of Total Paid by Insurance: Religious Institutes



Source: Annual Survey of Allegations and Costs, 2014-2018

In addition to allegation-related expenses, religious institutes spent about \$3.6 million (\$3,603,484) for child protection efforts between July 1, 2017 and June 30, 2018, such as training programs and background checks. This is a 65 percent increase compared to the \$2,189,308 reported spent on child protection efforts in year 2017.⁸ Figure 26 compares the settlement-related costs and child protection expenditures paid by religious institutes in audit years 2014 through 2018.

Figure 26. Total Allegation-Related Costs and Child Protection Efforts: Religious Institutes



Source: Annual Survey of Allegations and Costs, 2014-2018

Altogether, religious institutes reported \$27,050,874 in total costs related to child protection efforts as well as all costs related to allegations that

⁸ Some of this increase is due to 11 more religious institutes reporting their dollar figures for reporting year 2018 than had done so in reporting year 2017. In addition, nine religious institutes reported an average increase of about \$147,000 in their child protection amounts for year 2018 compared to 2017.

were paid between July 1, 2017 and June 30, 2018, an 49 percent increase from the \$18,170,687 combined total reported by religious institutes in these two categories last year.

TOTAL COMBINED RESPONSES OF DIOCESES, EPARCHIES, AND RELIGIOUS INSTITUTES

Tables 5, 6, and 7 present the combined total responses of dioceses, eparchies, and religious institutes. These tables depict the total number of allegations, victims, offenders, and costs as reported by these groups for the period between July 1, 2017 and June 30, 2018. Dioceses, eparchies, and religious institutes combined received 1,051 new credible allegations of sexual abuse of a minor by a diocesan, eparchial, or religious priest, religious brother, or deacon. These allegations were made by 1,044 individuals against 523 priests, religious brothers, or deacons. Of the 1,051 reported new allegations, 44 (or 4 percent) are allegations that are reported to have occurred since calendar year 2000.

Table 5. New Credible Allegations Received Combined Totals

	2014	2015	2016	2017	2018	Change (+/-) 2017-2018	Percentage Change
Victims	330	384	911	431	1,044	+613	+142%
Allegations	334	392	914	436	1,051	+615	+141%
Offenders	245	276	463	333	523	+190	+57%

Source: Annual Survey of Allegations and Costs, 2014-2018

Compared to year 2017 (July 1, 2016 to June 30, 2017), year 2018 saw a 141 percent increase in allegations and a 142 percent increase in victims reported, as well as a 57 percent increase in offenders. As was noted earlier, a substantial proportion of the increase in new allegations (65 percent) comes from the combined reporting of four dioceses and four religious institutes.

Dioceses, eparchies, and religious institutes reported paying out \$262,619,537 for costs related to allegations between July 1, 2017 and June 30, 2018. This includes payments for allegations reported in previous years. Table 6 presents the payments across several categories of allegation-related expenses.

Table 6. Costs Related to Allegations Combined Totals

	Settlements	Other Payments to Victims	Support for Offenders	Attorneys' Fees	Other Costs	GRAND TOTAL
2014	\$62,938,073	\$7,747,097	\$15,403,047	\$28,774,518	\$4,216,912	\$119,079,647
2015	\$92,518,869	\$9,092,443	\$14,008,052	\$33,740,768	\$4,259,412	\$153,619,544
2016	\$60,379,857	\$24,682,229	\$14,243,119	\$39,887,737	\$2,126,859	\$141,319,801
2017	\$168,788,491	\$10,571,817	\$13,026,662	\$33,009,846	\$3,559,859	\$228,956,675
2018	\$194,346,291	\$7,317,904	\$23,366,845	\$30,517,658	\$7,070,839	\$262,619,537
Change (+/-) 2017-2018	+\$25,557,800	-\$3,235,913	+\$10,340,183	-\$2,742,188	+\$3,510,980	+\$33,397,862
Percentage Change	+15%	-31%	+79%	-8%	+99%	+15%

Sources: Annual Survey of Allegations and Costs, 2014-2018

Three-fourths of the payments (74 percent) were for settlements to victims.⁹ Attorneys' fees accounted for an additional 12 percent. Support for offenders (including therapy, living expenses, legal expenses, etc.) amounted to 9 percent of these payments. An additional 3 percent were for other payments to victims that were not included in any settlement. A final 3 percent of payments were for other allegation-related costs.

⁹ Seventy-seven percent of the \$194,346,291 paid in settlements to victims in reporting year 2018 come from the settlements reported from four dioceses.

Dioceses, eparchies, and religious institutes paid \$39,290,069 for child protection efforts between July 1, 2017 and June 30, 2018. This is a 12 percent increase from the amount spent on such child protection efforts in the previous reporting year. Dioceses, eparchies, and religious institutes expended a total of \$262,619,537 for costs related to allegations between July 1, 2017 and June 30, 2018. Table 7 presents the combined allegation-related costs and child protection expenditures paid by dioceses, eparchies, and religious institutes.

Table 7. Costs Related to Child Protection Efforts and to Allegations Combined Totals

	FY 2014	FY 2015	FY 2016	FY 2017	FY2018
Total amounts for all child protection efforts, including SEC/VAC salaries and expenses, training programs, background checks, etc.	\$31,667,740	\$33,489,404	\$34,850,246	\$34,852,598	\$39,290,069
Total costs related to allegations	\$119,079,647	\$153,539,897	\$141,319,801	\$228,956,675	\$262,619,537
TOTAL	\$150,747,387	\$187,029,301	\$176,170,047	\$263,809,273	\$301,909,606

Source: Annual Survey of Allegations and Costs, 2014-2018

Altogether, dioceses, eparchies, and religious institutes reported \$301,611,961 in total costs related to child protection efforts as well as costs related to allegations that were paid between July 1, 2017 and June 30, 2018. This represents a 14 percent increase from that reported for year 2017 (July 1, 2016 to June 30, 2017).

APPENDICES

2018

APPENDIX A

2011 CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE

PREAMBLE

Since 2002, the Church in the United States has experienced a crisis without precedent in our times. The sexual abuse of children and young people by some deacons, priests, and bishops, and the ways in which these crimes and sins were addressed, have caused enormous pain, anger, and confusion. As bishops, we have acknowledged our mistakes and our roles in that suffering, and we apologize and take responsibility again for too often failing victims and the Catholic people in the past. From the depths of our hearts, we bishops express great sorrow and profound regret for what the Catholic people have endured.

Again, with this 2011 revision of the *Charter for the Protection of Children and Young People*, we re-affirm our deep commitment to creating a safe environment within the Church for children and youth. We have listened to the profound pain and suffering of those victimized by sexual abuse and will continue to respond to their cries. We have agonized over the sinfulness, the criminality, and the breach of trust perpetrated by some members of the clergy. We have determined as best we can the extent of the problem of this abuse of minors by clergy in our country, as well as commissioned a study of the causes and context of this problem.

We continue to have a special care for and a commitment to reaching out to the victims of sexual abuse and their families. The damage caused by sexual abuse of minors is devastating and long-lasting. We apologize to them for the grave harm that has been inflicted on them, and we offer our help for the future. The loss of trust that is often

the consequence of such abuse becomes even more tragic when it leads to a loss of the faith that we have a sacred duty to foster. We make our own the words of His Holiness, Pope John Paul II: that the sexual abuse of young people is “by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God” (Address to the Cardinals of the United States and Conference Officers, April 23, 2002).

Along with the victims and their families, the entire Catholic community in this country has suffered because of this scandal and its consequences. In the last nine years, the intense public scrutiny of the minority of the ordained who have betrayed their calling has caused the vast majority of faithful priests and deacons to experience enormous vulnerability to being misunderstood in their ministry and even to the possibility of false accusations. We share with them a firm commitment to renewing the image of the vocation to Holy Orders so that it will continue to be perceived as a life of service to others after the example of Christ our Lord.

We, who have been given the responsibility of shepherding God’s people, will, with his help and in full collaboration with all the faithful, continue to work to restore the bonds of trust that unite us. Words alone cannot accomplish this goal. It will begin with the actions we take in our General Assembly and at home in our dioceses and eparchies.

We feel a particular responsibility for “the ministry of reconciliation” (2 Cor 5:18) which God, who reconciled us to himself through Christ, has given us. The love of Christ impels us to ask forgiveness for our own faults but also to appeal to all—to those who have been victimized, to those who have

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offended, and to all who have felt the wound of this scandal—to be reconciled to God and one another.

Perhaps in a way never before experienced, we have felt the power of sin touch our entire Church family in this country; but as St. Paul boldly says, God made Christ “to be sin who did not know sin, so that we might become the righteousness of God in him” (2 Cor 5:21). May we who have known sin experience as well, through a spirit of reconciliation, God’s own righteousness.

We know that after such profound hurt, healing and reconciliation are beyond human capacity alone. It is God’s grace and mercy that will lead us forward, trusting Christ’s promise: “for God all things are possible” (Mt 19:26).

In working toward fulfilling this responsibility, we have relied first of all on Almighty God to sustain us in faith and in the discernment of the right course to take.

We have received fraternal guidance and support from the Holy See that has sustained us in this time of trial.

We have relied on the Catholic faithful of the United States. Nationally and in each diocese, the wisdom and expertise of clergy, religious, and laity have contributed immensely to confronting the effects of the crisis and have taken steps to resolve it. We are filled with gratitude for their great faith, for their generosity, and for the spiritual and moral support that we have received from them.

We acknowledge and affirm the faithful service of the vast majority of our priests and deacons and the love that their people have for them. They deservedly have our esteem and that of the Catholic people for their good work. It is regrettable that their committed ministerial witness has been overshadowed by this crisis.

In a special way, we acknowledge those victims of clergy sexual abuse and their families who have trusted us enough to share their stories and to help us appreciate more fully the consequences of this reprehensible violation of sacred trust.

Let there now be no doubt or confusion on anyone’s part: For us, your bishops, our obligation to protect children and young people and to prevent sexual abuse flows from the mission and example given to us by Jesus Christ himself, in whose name we serve.

As we work to restore trust, we are reminded how Jesus showed constant care for the vulnerable. He

inaugurated his ministry with these words of the Prophet Isaiah:

The Spirit of the Lord is upon me,
because he has anointed me
to bring glad tidings to the poor.
He has sent me to proclaim liberty to captives
and recovery of sight to the blind,
to let the oppressed go free,
and to proclaim a year acceptable to the Lord.
(Lk 4:18-19)

In Matthew 25, the Lord, in his commission to his apostles and disciples, told them that whenever they show mercy and compassion to the least ones, they show it to him.

Jesus extended this care in a tender and urgent way to children, rebuking his disciples for keeping them away from him: “Let the children come to me” (Mt 19:14). And he uttered a grave warning that for anyone who would lead the little ones astray, it would be better for such a person “to have a great millstone hung around his neck and to be drowned in the depths of the sea” (Mt 18:6).

We hear these words of the Lord as prophetic for this moment. With a firm determination to restore the bonds of trust, we bishops recommit ourselves to a continual pastoral outreach to repair the breach with those who have suffered sexual abuse and with all the people of the Church.

In this spirit, over the last nine years, the principles and procedures of the *Charter* have been integrated into church life.

- The Secretariat of Child and Youth Protection provides the focus for a consistent, ongoing, and comprehensive approach to creating a secure environment for young people throughout the Church in the United States.
- The Secretariat also provides the means for us to be accountable for achieving the goals of the *Charter*, as demonstrated by its annual reports on the implementation of the *Charter* based on independent compliance audits.
- The National Review Board is carrying on its responsibility to assist in the assessment of diocesan compliance with the *Charter for the Protection of Children and Young People*.
- The descriptive study of the nature and scope of sexual abuse of minors by Catholic clergy in the United States, commissioned by the National

Review Board, has been completed. The resulting study, examining the historical period 1950-2002, by the John Jay College of Criminal Justice provides us with a powerful tool not only to examine our past but also to secure our future against such misconduct.

- The U.S. bishops charged the National Review Board to oversee the completion of the *Causes and Context* study.
- Victims' assistance coordinators are in place throughout our nation to assist dioceses in responding to the pastoral needs of those who have been injured by abuse.
- Diocesan/eparchial bishops in every diocese are advised and greatly assisted by diocesan review boards as the bishops make the decisions needed to fulfill the *Charter*.
- Safe environment programs are in place to assist parents and children—and those who work with children—in preventing harm to young people. These programs continually seek to incorporate the most useful developments in the field of child protection.

Through these steps and many others, we remain committed to the safety of our children and young people.

While it seems that the scope of this disturbing problem of sexual abuse of minors by clergy has been reduced over the last decade, the harmful effects of this abuse continue to be experienced both by victims and dioceses.

Thus it is with a vivid sense of the effort which is still needed to confront the effects of this crisis fully and with the wisdom gained by the experience of the last six years that we have reviewed and revised the *Charter for the Protection of Children and Young People*. We now re-affirm that we will assist in the healing of those who have been injured, will do all in our power to protect children and young people, and will work with our clergy, religious, and laity to restore trust and harmony in our faith communities, as we pray for God's kingdom to come, here on earth, as it is in heaven.

To make effective our goals of a safe environment within the Church for children and young people and of preventing sexual abuse of minors by clergy in the future, we, the members of the United States Conference of Catholic Bishops, have outlined in this *Charter* a series of practical and pastoral steps,

and we commit ourselves to taking them in our dioceses and eparchies.

TO PROMOTE HEALING AND RECONCILIATION WITH VICTIMS/SURVIVORS OF SEXUAL ABUSE OF MINORS

ARTICLE 1. Dioceses/eparchies are to reach out to victims/survivors and their families and demonstrate a sincere commitment to their spiritual and emotional well-being. The first obligation of the Church with regard to the victims is for healing and reconciliation. Each diocese/eparchy is to continue its outreach to every person who has been the victim of sexual abuse* as a minor by anyone in church service, whether the abuse was recent or occurred many years in the past. This outreach may include provision of counseling, spiritual assistance, support groups, and other social services agreed upon by the victim and the diocese/eparchy.

Through pastoral outreach to victims and their families, the diocesan/eparchial bishop or his representative is to offer to meet with them, to listen with patience and compassion to their experiences and concerns, and to share the “profound sense of solidarity and concern” expressed by His Holiness, Pope John Paul II, in his Address to the Cardinals of the United States and Conference Officers (April 23, 2002). Pope Benedict XVI, too, in his address to the U.S. bishops in 2008 said of the clergy sexual abuse crisis, “It is your God-given responsibility as pastors to bind up the wounds caused by every breach of trust, to foster healing, to promote reconciliation and to reach out with loving concern to those so seriously wronged.”

We bishops and eparchs commit ourselves to work as one with our brother priests and deacons to foster reconciliation among all people in our dioceses/eparchies. We especially commit ourselves to work with those individuals who were themselves abused and the communities that have suffered because of the sexual abuse of minors that occurred in their midst.

ARTICLE 2. Dioceses/eparchies are to have policies and procedures in place to respond promptly to any allegation where there is reason to believe that sexual abuse of a minor has occurred. Dioceses/eparchies are to have a competent person or persons to coordinate assistance for the immediate pastoral care of persons who report having been sexually abused as minors by clergy or other church personnel. The procedures for those making a complaint are to be readily available in printed form in the principal languages in which the liturgy is celebrated in the diocese/eparchy and be the subject of public announcements at least annually.

Dioceses/eparchies are also to have a review board that functions as a confidential consultative body to the bishop/eparch. The majority of its members are to be lay persons not in the employ of the diocese/eparchy (see Norm 5 in *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, 2006). This board is to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry. It is regularly to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors. Also, the board can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases.

ARTICLE 3. Dioceses/eparchies are not to enter into settlements which bind the parties to confidentiality unless the victim/survivor requests confidentiality and this request is noted in the text of the agreement.

TO GUARANTEE AN EFFECTIVE RESPONSE TO ALLEGATIONS OF SEXUAL ABUSE OF MINORS

ARTICLE 4. Dioceses/eparchies are to report an allegation of sexual abuse of a person who is a minor to the public authorities. Dioceses/eparchies are to comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and cooperate

in their investigation in accord with the law of the jurisdiction in question.

Dioceses/eparchies are to cooperate with public authorities about reporting cases even when the person is no longer a minor.

In every instance, dioceses/eparchies are to advise victims of their right to make a report to public authorities and support this right.

ARTICLE 5. We affirm the words of His Holiness, Pope John Paul II, in his Address to the Cardinals of the United States and Conference Officers: "There is no place in the priesthood or religious life for those who would harm the young."

Sexual abuse of a minor by a cleric is a crime in the universal law of the Church (CIC, c. 1395 §2; CCEO, c. 1453 §1). Because of the seriousness of this matter, jurisdiction has been reserved to the Congregation for the Doctrine of the Faith (*Motu proprio Sacramentorum sanctitatis tutela*, AAS 93, 2001). Sexual abuse of a minor is also a crime in all civil jurisdictions in the United States.

Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor*—when-ever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state. In keeping with the stated purpose of this *Charter*, an offending priest or deacon is to be offered therapeutic professional assistance both for the purpose of prevention and also for his own healing and well-being.

The diocesan/eparchial bishop is to exercise his power of governance, within the parameters of the universal law of the Church, to ensure that any priest or deacon subject to his governance who has committed even one act of sexual abuse of a minor as described below (see note) shall not continue in ministry.

A priest or deacon who is accused of sexual abuse of a minor is to be accorded the presumption of innocence during the investigation of the allegation and all appropriate steps are to be taken to protect his reputation. He is to be encouraged to retain the assistance of civil and canonical counsel. If the allegation is deemed not substantiated, every step possible is to be taken to restore his good name, should it have been harmed.

In fulfilling this article, dioceses/eparchies are to follow the requirements of the universal law of the Church and of the *Essential Norms* approved for the United States.

ARTICLE 6. There are to be clear and well-publicized diocesan/eparchial standards of ministerial behavior and appropriate boundaries for clergy and for any other paid personnel and volunteers of the Church in positions of trust who have regular contact with children and young people.

ARTICLE 7. Dioceses/eparchies are to be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish and other church communities directly affected by sexual abuse of a minor.

TO ENSURE THE ACCOUNTABILITY OF OUR PROCEDURES

ARTICLE 8. By the authority of the United States Conference of Catholic Bishops, the mandate of the Ad Hoc Committee on Sexual Abuse is renewed, and it is now constituted the Committee on the Protection of Children and Young People. It becomes a standing committee of the Conference. Its membership is to include representation from all the episcopal regions of the country, with new appointments staggered to maintain continuity in the effort to protect children and youth.

The Committee is to advise the USCCB on all matters related to child and youth protection and is to oversee the development of the plans, programs, and budget of the Secretariat of Child and Youth Protection. It is to provide the USCCB with comprehensive planning and recommendations concerning child and youth protection by coordinating the efforts of the Secretariat and the National Review Board.

ARTICLE 9. The Secretariat of Child and Youth Protection, established by the Conference

of Catholic Bishops, is to staff the Committee on the Protection of Children and Young People and be a resource for dioceses/eparchies for the implementation of “safe environment” programs and for suggested training and development of diocesan personnel responsible for child and youth protection programs, taking into account the financial and other resources, as well as the population, area, and demographics of the diocese/eparchy.

The Secretariat is to produce an annual public report on the progress made in implementing and maintaining the standards in this *Charter*. The report is to be based on an annual audit process whose method, scope, and cost are to be approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. This public report is to include the names of those dioceses/eparchies which the audit shows are not in compliance with the provisions and expectations of the *Charter*.

As a member of the Conference staff, the Executive Director of the Secretariat is appointed by and reports to the General Secretary. The Executive Director is to provide the Committee on the Protection of Children and Young People and the National Review Board with regular reports of the Secretariat’s activities.

ARTICLE 10. The whole Church, especially the laity, at both the diocesan and national levels, needs to be engaged in maintaining safe environments in the Church for children and young people.

The Committee on the Protection of Children and Young People is to be assisted by the National Review Board, a consultative body established in 2002 by the USCCB. The Board will review the annual report of the Secretariat of Child and Youth Protection on the implementation of this *Charter* in each diocese/eparchy and any recommendations that emerge from it, and offer its own assessment regarding its approval and publication to the Conference President.

The Board will also advise the Conference President on future members. The Board members are appointed by the Conference President in consultation with the Administrative Committee and are accountable to him and to the USCCB Executive Committee. Before a candidate

is contacted, the Conference President is to seek and obtain, in writing, the endorsement of the candidate's diocesan bishop. The Board is to operate in accord with the statutes and bylaws of the USCCB and within procedural guidelines to be developed by the Board in consultation with the Committee on the Protection of Children and Young People and approved by the USCCB Administrative Committee. These guidelines are to set forth such matters as the Board's purpose and responsibility, officers, terms of office, and frequency of reports to the Conference President on its activities.

The Board will offer its advice as it collaborates with the Committee on the Protection of Children and Young People on matters of child and youth protection, specifically on policies and best practices. The Board and Committee on the Protection of Children and Young People will meet jointly several times a year.

The Board will review the work of the Secretariat of Child and Youth Protection and make recommendations to the Director. It will assist the Director in the development of resources for dioceses.

The Board will offer its assessment of the Causes and Context study to the Conference, along with any recommendations suggested by the study.

ARTICLE 11. The President of the Conference is to inform the Holy See of this revised *Charter* to indicate the manner in which we, the Catholic bishops, together with the entire Church in the United States, intend to continue our commitment to the protection of children and young people. The President is also to share with the Holy See the annual reports on the implementation of the *Charter*.

TO PROTECT THE FAITHFUL IN THE FUTURE

ARTICLE 12. Dioceses/eparchies are to maintain "safe environment" programs which the diocesan/eparchial bishop deems to be in accord with Catholic moral principles. They are to be conducted cooperatively with parents, civil authorities, educators, and community organizations to provide education and

training for children, youth, parents, ministers, educators, volunteers, and others about ways to make and maintain a safe environment for children and young people. Dioceses/eparchies are to make clear to clergy and all members of the community the standards of conduct for clergy and other persons in positions of trust with regard to children.

ARTICLE 13. Dioceses/eparchies are to evaluate the background of all incardinated and non-incardinated priests and deacons who are engaged in ecclesiastical ministry in the diocese/eparchy and of all diocesan/eparchial and parish/school or other paid personnel and volunteers whose duties include ongoing, unsupervised contact with minors. Specifically, they are to utilize the resources of law enforcement and other community agencies. In addition, they are to employ adequate screening and evaluative techniques in deciding the fitness of candidates for ordination (cf. United States Conference of Catholic Bishops, *Program of Priestly Formation* [Fifth Edition], 2006, no. 39).

ARTICLE 14. Transfers of clergy who have committed an act of sexual abuse against a minor for residence, including retirement, shall be as in accord with Norm 12 of the Essential Norms. (Cf. *Proposed Guidelines on the Transfer or Assignment of Clergy and Religious*, adopted by the USCCB, the Conference of Major Superiors of Men [CMSM], the Leadership Conference of Women Religious [LCWR], and the Council of Major Superiors of Women Religious [CMSWR] in 1993.)

ARTICLE 15. To ensure continuing collaboration and mutuality of effort in the protection of children and young people on the part of the bishops and religious ordinaries, two representatives of the Conference of Major Superiors of Men are to serve as consultants to the Committee on the Protection of Children and Young People. At the invitation of the Major Superiors, the Committee will designate two of its members to consult with its counterpart at CMSM. Diocesan/eparchial bishops and major superiors of clerical institutes or their delegates are to meet periodically to coordinate their roles concerning the issue of allegations made against a cleric member of a religious institute ministering in a diocese/eparchy.

ARTICLE 16. Given the extent of the problem of the sexual abuse of minors in our society, we are willing to cooperate with other churches and ecclesial communities, other religious bodies, institutions of learning, and other interested organizations in conducting research in this area.

ARTICLE 17. We commit ourselves to work individually in our dioceses/eparchies and together as a Conference, through the appropriate committees, to strengthen our programs both for initial priestly formation and for the ongoing formation of priests. With renewed urgency, we will promote programs of human formation for chastity and celibacy for both seminarians and priests based upon the criteria found in *Pastores Dabo Vobis*, the *Program of Priestly Formation*, the *Basic Plan for the Ongoing Formation of Priests*, and the results of the Apostolic Visitation. We will continue to assist priests, deacons, and seminarians in living out their vocation in faithful and integral ways.

CONCLUSION

As we wrote in 2002, “It is within this context of the essential soundness of the priesthood and of the deep faith of our brothers and sisters in the Church that we know that we can meet and resolve this crisis for now and the future.”

We wish to re-affirm once again that the vast majority of priests and deacons serve their people faithfully and that they have the esteem and affection of their people. They also have our love and esteem and our commitment to their good names and well-being.

An essential means of dealing with the crisis is prayer for healing and reconciliation, and acts of reparation for the grave offense to God and the deep wound inflicted upon his holy people. Closely connected to prayer and acts of reparation is the call to holiness of life and the care of the diocesan/eparchial bishop to ensure that he and his priests avail themselves of the proven ways of avoiding sin and growing in holiness of life.

IT IS WITH RELIANCE ON PRAYER AND PENANCE THAT WE RENEW THE PLEDGES WHICH WE MADE IN THE ORIGINAL CHARTER:

We pledge most solemnly to one another and to you, God’s people, that we will work to our utmost for the protection of children and youth.

We pledge that we will devote to this goal the resources and personnel necessary to accomplish it.

We pledge that we will do our best to ordain to the priesthood and put into positions of trust only those who share this commitment to protecting children and youth.

We pledge that we will work toward healing and reconciliation for those sexually abused by clerics.



Much has been done to honor these pledges. We devoutly pray that God who has begun this good work in us will bring it to fulfillment.

This *Charter* is published for the dioceses/eparchies of the United States. It is to be reviewed again after two years by the Committee on the Protection of Children and Young People with

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the advice of the National Review Board. The results of this review are to be presented to the full Conference of Bishops for confirmation.

NOTE

* For purposes of this *Charter*, the offense of sexual abuse of a minor will be understood in accord with the provisions of *Sacramentorum sanctitatis tutela* (SST), article 6, which reads:

§1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by

whatever means or using whatever technology;

§2. A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

In view of the Circular Letter from the Congregation for the Doctrine of the Faith, dated May 3, 2011, which calls for “mak[ing] allowance for the legislation of the country where the Conference is located,” Section III(g), we will apply the federal legal age for defining child pornography, which includes pornographic images of minors under the age of eighteen, for assessing a cleric’s suitability for ministry and for complying with civil reporting statutes.

If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (*Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, 1995, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.



Center for Applied Research in the Apostolate
Annual Survey of Allegations and Costs

APPENDIX B

QUESTIONNAIRE FOR DIOCESES AND EPARCHIES

This questionnaire is designed to survey dioceses and eparchies about credible accusations of abuse and the costs in dealing with these allegations. The results will be used to demonstrate progress in implementing the Charter for the Protection of Children and Young People and reducing the incidence of sexual abuse within the Church.

All data collected here are entirely confidential. Only national aggregate results will be reported.

**ALL DATA REPORTED HERE REFER TO THE PRECEDING AUDIT YEAR –
JULY 1, 2017-JUNE 30, 2018.**

As of June 30, 2018 the total number of allegations received between July 1, 2017 and June 30, 2018 that did not meet the threshold for a credible allegation because they were:

80 A1. Unsubstantiated. 526 A3. Investigation ongoing. (See accompanying glossary for the
18 A2. Obviously false. 216 A4. Unable to be proven. definitions of these terms.)

The total number of allegations received prior to July 1, 2017 that were resolved by June 30, 2018 as:

228 B1. Credible. 2 B3. Obviously false.
43 B2. Unsubstantiated. 40 B4. Unable to be proven or settled without investigation.

CREDIBLE ALLEGATIONS RECEIVED JULY 1, 2017-JUNE 30, 2018

*NOTE: An allegation is defined as one victim alleging an act or acts of abuse by one alleged perpetrator. Only **credible allegations** (see accompanying glossary for definitions) are appropriate for inclusion below.*

- 864 1. Total number of new credible allegations of sexual abuse of a minor reported against a priest or deacon in the diocese **between July 1, 2017 and June 30, 2018**. (Do not include clergy that are members of religious institutes as they will be reported by their religious institutes).
6 2. Of the total number in item 1, the number of allegations that involved solely child pornography.

Of the total number in item 1, the number that were first reported to the diocese/eparchy by:
Choose only one category for each allegation. (The sum of items 3-9 should equal item 1).

313 3. Victim. 10 7. Law enforcement.
24 4. Family member of the victim. 7 8. Bishop or official from another diocese.
6 5. Friend of the victim. 17 9. Other: _____.
487 6. Attorney.

Of the total number in item 1 (excluding the solely child pornography cases), the number of alleged victims that are:
694 10. Male. 13 Gender not reported
157 11. Female.

Of the total number in item 1 (excluding the solely child pornography cases), the number of alleged victims in each age category when the alleged abuse began: (Choose only one category for each allegation).

167 12. 0-9.
435 13. 10-14.
141 14. 15-17.
121 15. Age unknown.

Of the total number in item 1, the number that are alleged to have begun in:

Choose only one category for each allegation. (The sum of items 16-31 should equal item 1).
27 16. 1954 or earlier. 154 21. 1975-1979. 22 26. 2000-2004. 39 31. Time period unknown.
38 17. 1955-1959. 108 22. 1980-1984. 6 27. 2005-2009.
80 18. 1960-1964. 58 23. 1985-1989. 2 28. 2010-2014.
119 19. 1965-1969. 33 24. 1990-1994. 9 29. 2015-2017.
145 20. 1970-1974. 21 25. 1995-1999. 3 30. 2018.

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ALLEGED PERPETRATORS

NOTE: Include any perpetrators who are or were ordained members of the clergy legitimately serving in or assigned to the diocese or eparchy at the time the credible allegation(s) was alleged to have occurred. Do not include clergy that are members of religious institutes as they will be reported by their religious institutes.

436 32. Total number of priests or deacons against whom new credible allegations of sexual abuse of a minor have been reported between July 1, 2017 and June 30, 2018.

Of the total number in item 32, how many were in each category below at the time of the alleged abuse?

Choose only one category for each alleged perpetrator. (The sum of items 33-38 should equal item 32).

395 33. Diocesan priests ordained for this diocese or eparchy.

9 34. Diocesan priests incardinated later in this diocese or eparchy.

8 35. Extern diocesan priests from another U.S. diocese serving in this diocese or eparchy.

5 36. Extern diocesan priests from a diocese outside the United States serving in this diocese or eparchy.

5 37. Permanent deacons.

14 38. Other: _____.

Of the total number in item 32, the number that:

280 39. Have had one or more previous allegations reported against them prior to July 1, 2017.

350 40. Are deceased, already removed from ministry, already laicized, or missing.

14 41. Have been permanently removed or retired from ministry between July 1, 2017 and June 30, 2018 based on allegations of abuse.

0 42. Have been returned to ministry between July 1, 2017 and June 30, 2018 based on the resolution of allegations of abuse.

15 43. Remain temporarily removed from ministry pending investigation of allegations (as of June 30, 2018).

3 44. Remain in active ministry pending investigation of allegations (as of June 30, 2018).

54 Unreported

Indicate the total number of alleged perpetrators identified prior to July 1, 2017 that:

16 45. Were permanently removed or retired from ministry between July 1, 2017 and June 30, 2018 based on allegations of abuse.

5 46. Were returned to ministry between July 1, 2017 and June 30, 2018 based on the resolution of allegations of abuse.

45 47. Remain temporarily removed from ministry pending investigation of allegations (as of June 30, 2018).

3 48. Remain in active ministry pending investigation of allegations (as of June 30, 2018).

COSTS

\$35,388,940 49. Amounts paid for **all child protection** efforts, including SEC/VAC salaries and expenses, training programs, background checks, etc.

*Indicate the approximate total amount of funds expended by the diocese between July 1, 2017 and June 30, 2018 for **payments as the result of allegations of sexual abuse of a minor** (notwithstanding the year in which the allegation was received):*

\$180,475,951 50. All settlements paid to victims.

\$6,914,194 51. Other payments to victims (e.g., for therapy or other expenses, if separate from settlements).

\$20,035,914 52. Payments for support for offenders (including living expenses, legal expenses, therapy, etc.).

\$25,990,265 53. Payments for attorneys' fees.

\$5,755,823 54. Other allegation-related costs: _____.

12.56% 55. Approximate percentage of the amount in items 50-54 that was covered by diocesan insurance.

In the event it is necessary for clarification about the data reported here, please supply the following information:

Name and title of person completing this form: _____

Arch/Diocese: _____ Phone: _____

Thank you for completing this survey.

Center for Applied Research in the Apostolate (CARA), 2300 Wisconsin Ave NW, Suite 400, Washington, DC 20007

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Center for Applied Research in the Apostolate Annual Survey of Allegations and Costs

APPENDIX C

QUESTIONNAIRE FOR RELIGIOUS INSTITUTES

This questionnaire is designed to survey religious institutes, societies of apostolic life or the separate provinces thereof and will be used to demonstrate progress in implementing the Charter for the Protection of Children and Young People and reducing the incidence of sexual abuse within the Church.

All data collected here are entirely confidential. Only national aggregate results will be reported.

**ALL DATA REPORTED HERE REFER TO THE PRECEDING AUDIT YEAR –
JULY 1, 2017-JUNE 30, 2018.**

As of June 30, 2018, the total number of allegations received between July 1, 2017 and June 30, 2018 that did not meet the threshold for a credible allegation because they were:

18 A1. Unsubstantiated.	60 A3. Investigation ongoing.	(See accompanying glossary for the
7 A2. Obviously false.	43 A4. Unable to be proven.	definitions of these terms.)

The total number of allegations received prior to July 1, 2017 that were resolved by June 30, 2018 as:

94 B1. Credible.	8 B3. Obviously false.
38 B2. Unsubstantiated.	34 B3. Unable to be proven or settled without investigation.

CREDIBLE ALLEGATIONS RECEIVED JULY 1, 2017-JUNE 30, 2018

NOTE: An allegation is defined as one victim alleging an act or acts of abuse by one alleged perpetrator. Only credible allegations (see accompanying glossary for definitions) are appropriate for inclusion in this survey.

- 187 1. Total number of new credible allegations of sexual abuse of a minor reported against a priest, deacon, or perpetually professed brother in the religious institute between July 1, 2017 and June 30, 2018. (**Only include members of the religious institute who are clergy or perpetually professed brothers.**)
- 1 2. Of the total number in item 1, the number of allegations that involved solely child pornography.

Of the total number in item 1, the number that were first reported to the religious institute by:

Choose only one category for each allegation. (The sum of items 3-9 should equal item 1).

31 3. Victim.	1 7. Law enforcement.
3 4. Family member of the victim.	41 8. Bishop or other official from a diocese.
1 5. Friend of the victim.	69 9. Other:_____.
41 6. Attorney.	

Of the total number in item 1 (excluding the solely child pornography cases), the number of alleged victims that are:

164 10. Male.
22 11. Female.

Of the total number in item 1 (excluding the solely child pornography cases), the number of alleged victims in each age category when the alleged abuse began: (Choose only one category for each allegation).

25 12. 0-9.	56 14. 15-17.
84 13. 10-14.	21 15. Age unknown.

Of the total number in item 1, the number that are alleged to have begun in:

Choose only one category for each allegation. (The sum of items 16-30 should equal item 1).

6 16. 1954 or earlier	24 22. 1980-1984	0 28. 2010-2014
5 17. 1955-1959	8 23. 1985-1989	1 29. 2015-2017
15 18. 1960-1964	3 24. 1990-1994	1 30. 2018
29 19. 1965-1969	3 25. 1995-1999	5 31. Time period
48 20. 1970-1974	0 26. 2000-2004	unknown
38 21. 1975-1979	0 27. 2005-2009	

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ALLEGED PERPETRATORS

NOTE: Include any perpetrators who are or were **ordained members of the religious clergy or were perpetually professed brothers** legitimately serving in or assigned to a diocese or eparchy or within the religious institute at the time the credible allegation(s) was alleged to have occurred.

87 32. Total number of **clergy or perpetually professed brothers** against whom new credible allegations of sexual abuse of a minor have been reported between July 1, 2017 and June 30, 2018.

Of the total number in item 32, how many were in each category below at the time of the alleged abuse?

Choose only one category for each alleged perpetrator. (The sum of items 33-38 should equal item 32).

- | Priests | Brothers | |
|----------------|-----------------|--|
| 50 33a. | 23 33b. | Member of this province assigned within the United States. |
| 3 34a. | 0 34b. | Member of this province assigned outside the United States. |
| 4 35a. | 6 35b. | Formerly of this province but no longer a member of the religious institute. |
| 0 36a. | 0 36b. | Member of another U.S. province but serving in this province of the religious institute. |
| 1 37a. | 0 37b. | Member of a non-U.S. based province but serving in this province of the religious institute. |
| 0 38. | | Deacon members of the religious institute. |

Of the total number in item 32, the number that:

- 16 39. Are diagnosed situational offenders.
9 40. Are diagnosed preferential offenders.
55 41. Not known or have not yet received a diagnosis.

- 4 42. *Of the total number of diagnosed situational offenders in item 39, the number who have reoffended.*
3 43. *Of the total number of diagnosed preferential offenders in item 40, the number who have reoffended.*
4 44. *Of the total number of undiagnosed offenders in item 41, the number who have reoffended.*

*Indicate the total number of alleged perpetrators identified **prior to July 1, 2017** that:*

- 75 45. Are diagnosed situational offenders.
56 46. Are diagnosed preferential offenders.

5 47. *Of the total number diagnosed situational offenders in item 45, the number who have reoffended.*
4 48. *Of the total number diagnosed preferential offenders in item 46, the number who have reoffended.*

COSTS

\$3,603,484 49. Amounts paid for **all child protection** efforts, including monitoring and supervising personnel and efforts, workshops, background checks, etc.

*Indicate the approximate total amount of funds expended by the religious institute between July 1, 2017 and June 30, 2018 for **payments as the result of allegations of sexual abuse of a minor** (notwithstanding the year in which the allegation was received):*

- \$13,870,340 50. All settlements paid to victims.
\$403,710 51. Other payments to victims (e.g., for therapy or other expenses, if separate from settlements).
\$3,330,931 52. Payments for support for offenders (including living expenses, legal expenses, therapy, etc.).
\$4,527,393 53. Payments for attorneys' fees.
\$1,315,016 54. Other allegation-related costs: _____
1.91% 55. Approximate percentage of the amount in items 50-54 that was covered by insurance of the religious institute.

In the event it is necessary for clarification about the data reported here, please supply the following information:

Name and title of person completing this form: _____

Institute: _____ Phone: _____

Thank you for completing this survey.

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